Public Utilities Fortnightly

VOLUME XII — *October 12, 1933* — NUMBER 8

Contents of previous issues of PUBLIC UTILITIES FORTNIGHTLY *can be found by consulting the "Industrial Arts Index" in your library.*

¶ *This magazine is an open forum for the free expression of opinion concerning public utility regulation and allied topics. It is not the mouthpiece of any group or faction; it is not under the editorial supervision of, nor does it bear the endorsement of, any organization or association. The editors do not assume responsibility for the opinions expressed by its contributors.*

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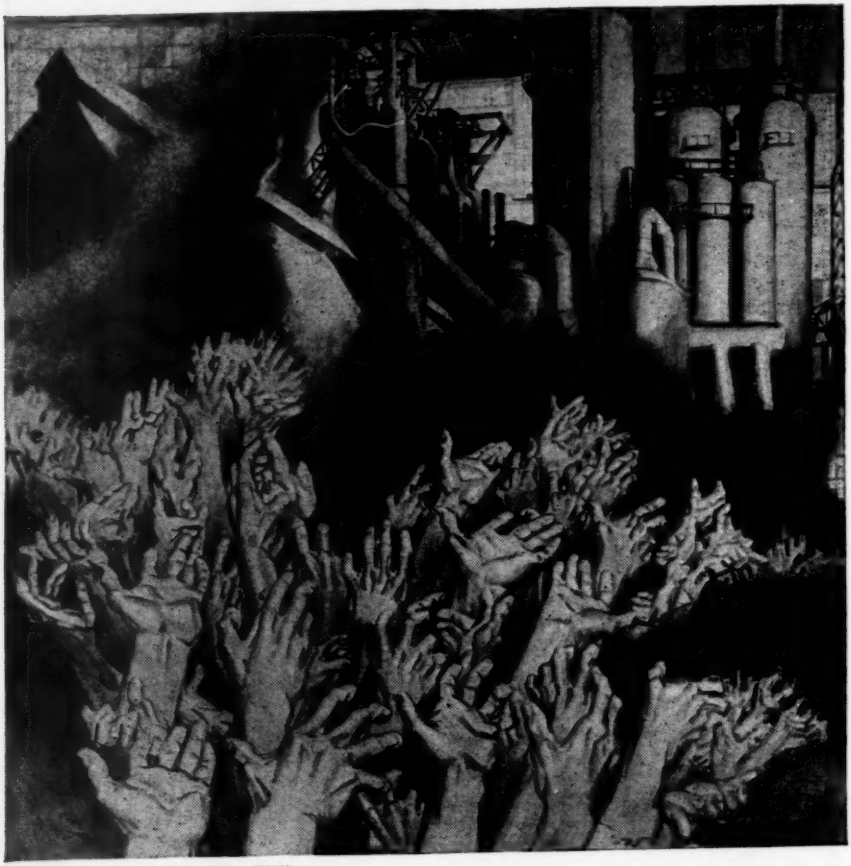
Public Utilities Almanack

OCTOBER

12	T^h	JOHN FITCH'S steamboat carried 30 passengers from Phila. to Burlington, 1788. The dirigible balloon *"Los Angeles"* flew from Germany to Lakehurst, N. J., 1924.
13	F	The Union Pacific Railroad went into the hands of receivers, 1893. Utility stocks were swept downwards in the great Wall Street panic, 1929.
14	S^a	The Georgia legislature created the state Public Service Commission, 1879. ELWOOD HAYNES, inventor of the first practical motor vehicle, was born, 1857.
15	S	PHINEAS DAVID won the $4,000 prize offered for a locomotive design, 1831. Natural gas was first piped from Texas to Chicago, 1931.
16	M	OLIVER EVANS excited ridicule by predicting railroad speed of 15 miles an hour, 1722. The Georgia Railway and Power Company was organized, 1911.
17	T^u	MICHAEL FARADAY discovered the principle of the electric dynamo, 1831. The first commercial radio message spanned the Atlantic, 1907.
18	W	THOMAS A. EDISON, electrical inventor and pioneer, died, 1931. First submarine telegraph line in U. S. was laid from N. Y. to Governor's Island, 1842.
19	T^h	GEORGE M. PULLMAN, creator of the "Pullman Palace Car," died, 1897. DUMONT showed possibilities of air transport by encircling Eiffel Tower, 1901.
20	F	Railroad trips from New York to Albany were put on a 5-hour schedule, 1852. The world's first postal service was established by CYRUS the Elder, 550 B. C.
21	S^a	THOMAS A. EDISON produced his first incandescent electric lamp, 1879. Chicago's last horse car line (on Dearborn Street) was abandoned, 1906.
22	S	PETER COOPER started to build his famous *"Tom Thumb"* locomotive, 1829. COLLIS P. HUNTINGTON, founder of Southern Pacific Railroad, was born, 1821.
23	M	San Francisco and New York were connected by telegraph, 1860. The Thalia Theater, first to be lighted by gas, opened in New York, 1826.
24	T^u	Completion of the transcontinental telegraph line put an end to the Pony Express, 1861. SAMUEL F. B. MORSE obtained his U. S. patent rights on the telegraph, 1848.
25	W	First 800 feet of track were laid in Nebraska by Union Pacific Rd., 1863. COLLYER made record flight from Atlantic to Pacific in 23 hrs., 51 min., 1928.



From a drawing by John Scott Williams

Altar Fires

Public Utilities
FORTNIGHTLY

VOL. XII; No. 8 OCTOBER 12, 1933

The Menace of the Municipal Plant to the Farmer

BY LEON O. WHITSELL
COMMISSIONER, CALIFORNIA STATE RAILROAD COMMISSION

"IF the municipalities in this state continue to condemn and take over the electrical distributing facilities within their corporate limits and thereby throw the greater burden of system maintenance and costs upon the backs of our rural population, the time is not far distant when that burden will become too great and agriculture will be compelled to forego the use of electrical energy or the utilities will be compelled to furnish electrical energy at a rate figure which would not return sufficient compensation to warrant the maintenance of the systems. Such taking of utilities' facilities with their resultant disintegration of utility systems will likewise be injurious to the urban as well as to the rural communities."

In his dissenting opinion in *Re* Tulare (1933) 38 Cal. R. C. R. 849, Commissioner Whitsell made this highly significant statement. In the following article he presents the views which lead him to that conclusion; they are of timely import because they treat of a problem that is now confronting many of the state commissions.

MUNICIPAL ownership is an ever present issue in many states. In California the movement has, within recent times, assumed statewide proportions, and if carried to its logical conclusion, it bids fair to place that state in the forefront as America's leading municipal ownership commonwealth.

In this movement, I sense danger ahead. I believe that divorcing the city load from our great utility systems points a downward path to the social and economic life of rural Cali-

fornia. I believe that this trend will eventually prove harmful to both city and rural sections.

THE movement at the present time is very definitely directed against the electrical utilities and has for its intended purpose the taking over by the municipalities of distribution facilities within their corporate limits. This "splitting up" of system loads into elementary parts is, in my opinion, antisocial, a step backward—a direct reversal of the processes by which the almost universal use of electrical energy in modern social and industrial life has been accomplished.

I am not seeking controversy with the advocates of municipal ownership, nor do I wish to be understood as arguing the merits or demerits of municipal ownership *per se*. I merely seek to point out what I conceive to be the ultimate danger which threatens our rural people and the resultant harm which will be visited upon our city dwellers if this present intensified movement gains further momentum and the evident intention of its proponents is fully consummated.

WHY am I so vitally interested in California agriculture and why do I maintain that our cities should be concerned with the effect their determined efforts to possess electrical distribution facilities within their borders may have upon the rural inhabitants and particularly the farmers?

The reasons are self-evident. Agriculture is California's basic industry and therefore of primary importance. It is the Alpha and Omega of the state's very prosperity. The farm in that state is the breeding ground of that type of which we are so justly proud—the American type. Farming in California is more than a business; it is a life, and therefore should in every way be encouraged, assisted, and sustained. Agriculture is also the determining factor not only in our general economic well-being but particularly in the prosperity of our urban classes. It has a purchasing power *per capita* far in excess of the average for the rest of our population. It supplies the raw materials upon which depends industry and directly and indirectly gives employment to over one half of our city workers. In all truth, the sweat of the farmer lubricates the wheels of California industry.

Agriculture supplies over one fifth of the total tonnage of freight carried by the state's transportation systems. It pays over one fifth of the total cost of government. It represents one third of the state's tangible wealth and contributes one third of the state income. Agriculture is the master magnet, enticing within the state's borders those many millions of dollars which enable California to sustain its traditional reputation as a gold-producing state. Therefore, the well-being and prosperity of the farm population should be the primary concern of the entire citizenry.

To jeopardize the present or future success and prosperity of this basic industry is to strike at the welfare and prosperity of the whole state.

Yet in their zealous enthusiasm to engage in the distribution of electric power, the municipalities are raising their arms to strike just such an irreparable blow, blinded to the ultimate consequences by visions of lower rates or other inducements based on self-interest alone.

It may be contended that should the municipalities take over the electrical distribution systems within their corporate limits, the rates for service to municipal consumers under favorable operating conditions could be reduced below their present levels. The reasons given for this are manifestly apparent. The cost of service in areas where consumers are closely grouped, as in our cities, is less than in rural areas where they are more widely separated. In the cities, both consumers and revenue per mile of line or per dollar of investment are much greater than in the country. Also, when a city takes over a distribution system, it generally purchases its power at wholesale rates which are based on the costs of serving a highly diversified combination of urban and rural loads. These rates give a wide margin of spread between the cost to the city and the rate to the ultimate consumer, its additional cost being limited largely to distribution expenses. Much of the overhead cost of operation is shifted to agencies already in existence functioning as city government. It pays no city, franchise, state, or Federal taxes, which for California electrical utilities amount to approximately 15 per cent of the gross revenue collected from all classes of consumers. The keeping of accounts, reading of meters, billing, and collecting are generally done in connection with the service of water. Insurance, depreciation, maintenance, and proper utility accounting practices are in many cases given but little consideration.

Finally, the city does not need to consider the cost and operation of far-flung lines into rural territory with their high investment and relatively low return. It considers only those consumers included within its boundaries—a class which has always been the most lucrative.

The privately operated electrical systems in California properly were built to serve all classes of consumers. The business of these utilities includes the generation of power primarily by hydroelectric plants in the mountains supplemented by steam-electric plants on the sea coasts or rivers; the transmission of this power at high voltage across great agricultural valleys over long lines to urban centers; the transforming of it down to distribution voltage and the actual delivery of it to the apparatus of the consumer. The fact that the utilities do serve all classes of consumers introduces a factor of diversity in load and demand through which all classes of consumers help all other classes in reducing rates. The fact that the peak demands of the various classes are not simultaneous makes it possible to serve more consumers with less investment in facilities. In other words, it improves the load factor of the

¶ "The *city does not need to consider the cost and operation of far-flung lines into rural territory with their high investment and relatively low return. It considers only those consumers included within its boundaries—a class which has always been the most lucrative.*"

entire power distribution system.

California electrical consumers, both in the cities and in the country, enjoy lower rates than those in any other state now being served by privately owned utilities. The primary factor contributing to this happy result has been the diversity in load and demand through which each individual class of consumers helps all other classes in bearing the system's burdens and in making possible low rates. And in California, the principal reason for this diversity is directly due to the widespread use of electrical power in agricultural activities.

This diversity in load and demand is particularly evident with respect to the city and rural consumers. Their loads are mutually dependent and beneficial. The city load reaches its peak during the winter months when the country use is low. The irrigation power load comes on heavily during the period of flush river run-offs and attains its peak during the summer months, the period of low use in the cities and at a time when stored water must be drawn upon in order to satisfy irrigation water rights in the great interior valleys. The farm load thus fills in "the valley" of the city load and during that period carries more than its share of the system's cost, thereby making possible lower rates in the cities than would otherwise obtain. Separate either load from the system and a greater burden of capital costs, operation, and maintenance falls upon the other.

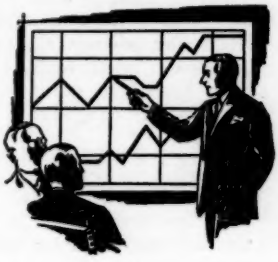
THERE is no question that the city load is the "cream" of the utility business. It is equally true that the consumers in the cities are, through their rates, at present partially helping pay the cost of service to the rural sections if allocable service costs are spread on the basis of averages. This is true, even though the rates in the cities are uniformly lower than the rates in the country. The exception to this last statement is found in a comparison of the agricultural power with the general power rates wherein the country does enjoy some advantage. The loss of the city load to the present utilities will remove this means of support to the rural areas. These rural areas will then be thrown "on their own." Their rates will have to be raised, if they are to pay their full way, instead of something in excess of increment costs as they now do.

The incentive for further rural electrification and extension of lines and service will cease to exist. The utilities will become wholesalers, generating power for resale and wholesale purposes only, delivering it at high voltage to be sold in large blocks. The farmer, thus finding himself deserted by both the municipal and private utilities, will be compelled to resort to individual initiative under conditions of financial handicap which will greatly reduce productive efficiency.

I AM fearful lest this present movement on the part of our cities to hasten the disintegration of our utility systems and its attendant harmful effects on agriculture will so discourage and embitter the great thinking body of our rural people that they will, through sheer desire to survive, resort to the technique and tactics of their forefathers, the Grangers, who revived that age-old conflict between the farm and the city. I know that

The Farmer Cannot Accept the Additional Tax Burden Entailed by Increases in Municipal Ownership

"THE farmer cannot accept the additional tax burden which any increase in municipal ownership will entail. If the cities insist upon condemning and taking over distribution systems within their boundaries, they will remove from the tax rolls properties which today are contributing millions to the cost of government. This tax burden must be redistributed over other taxpaying groups and the farmer neither can nor should shoulder any portion of it."



the good people of our cities do not fully realize the ultimate effects which their contemplated dismemberment of the utilities will have upon their brothers in the rural sections. I feel, furthermore, that there is no desire on the part of the better informed city inhabitant to be the moving cause in the renewal of an antisocial conflict which not only retarded our national progress but which engendered distrust and hatred between these two major classes of people which it has taken years to efface. If they do desire this, then this contemplated self-interest movement is admirably suited to accomplish that very end.

While contributing generally to the economic growth of the state, electricity has made a definite and tangible contribution to California's agricultural welfare. An ample and dependable supply of electric power has meant much to the farmer—just how much is revealed in figures compiled by the California Committee on the Relation of Electricity to Agriculture. In 1931, thirteen California utilities supplied power under nondomestic schedules to 58,640 farmers who used 1,393,520,695 kilowatt hours of electric energy. The average rate paid was 1.32 cents per kilowatt hour. A higher percentage of farms in California—63.8 per cent—than in any other state in the union receives electric service.

A continued supply of electric power for pumping of irrigation water is absolutely necessary to the economic operation of farm lands in California. Without irrigation water obtained at reasonably low costs, much of California's most valuable land would beyond question revert to the desert whence it was rescued. Therefore, electric service at the lowest feasible rates is vitally essential not only to California agriculture but to the entire state as well. The taking away by the cities of their load, the "cream" of the utility business will deprive the present public utility serving companies of a major portion of their revenue and must necessarily result in one of three alternatives:

1. The rates to the farmer will necessarily be greatly increased. This alternative is impossible of accomplishment, for the simple reason that the farmer has already reached the economic limit of ability to carry any additional capital or operating costs. Even with present relatively low electric power costs, many farmers have been forced to pump by means of other power equipment.

2. The power companies will be compelled to perform the service at a rate which will afford so low a return that investments in their securities will cease to be attractive to necessary capital. This, in turn, will inevitably increase the cost of money to the utilities and the completion of this vicious circle of lower return and higher costs will mean the virtual dissolution of these agencies, the development and service of which has materially contributed to the progress and prosperity of California, thus the utilities will be compelled to accept a greatly decreased remuneration for their services, which may be so low as to stifle initiative and impair efficient service to the point where the state may be forced to the necessity of taking over the electrical facilities and service. This latter eventuality is, in my judgment, extremely remote, for be it remembered that our people by popular mandate have upon three memorable occasions decisively rejected this alternative.

3. The farmer will be compelled to revert to the isolated, individual power plant with its attendant high costs, inconveniences, and lack of efficiency. This would compel him to junk the electrical equipment now in use, the cost of which amounts to millions of dollars.

WHILE the electric power companies in California have tremendously large investments, running into the millions, in extensions, transformers, services, and meter equipment to serve agricultural pumping installations, the farmers have a far greater sum total investment in motors, pumps, and other necessary equipment to utilize this power.

Aside from the loss which agriculture would suffer were it to be deprived of a cheap and adequate supply of electric power for pumping, there is a social aspect to rural electrification which cannot be overlooked. Before the advent of electricity and the automobile, there was ample reason for the jealousy with which the rural housewife looked at her urban sister. The movement of youth from the country to the city to obtain advantages and pleasures denied him in his rural environment has ceased. Electricity has brought to the farm homestead every convenience enjoyed by the city household. Banished forever are the odious tasks of the farmer's wife. At a touch of a switch, she commands all of the electrical genii that grace the urban home.

Must our rural population forego this service simply to satisfy the civic selfishness of the city dweller?

Not if the city dweller fully realizes his own true self-interest.

NOR can the farmer accept the additional tax burden which any increase in municipal ownership will entail. If the cities insist upon condemning and taking over distribution systems within their boundaries, they will remove from the tax rolls properties which today are contributing millions to the cost of government. This tax burden must be redistributed over other taxpaying groups and the farmer neither can nor should shoulder any portion of it. In California,

municipally owned utilities today deprive the state of more than a million dollars annually in taxes. So far, all efforts of the farmers to have these rightful taxes assessed through legislation have failed.

Some might argue that if the municipalities go into the electrical distributing business, the farmers can, under the law, also organize and operate power districts for the same purpose. One need but to point to the fact that the profits attainable from such an undertaking even if competently managed are so small as to be uninviting. Farming in California is a highly technical process under the most favorable circumstances and should not be complicated by attempting to amalgamate it with another highly specialized industry.

The city dwellers have, from the very inception of our civilization, been self-centered, their horizon of vision being too often circumscribed by the arbitrary line which separates the city from the country. They have exhibited toward their agricultural brethren a patronizing attitude, apparently unmindful that their very sustenance, their progress, and their prosperity have in the main been dependent upon agriculture. It is a rather significant fact that a depressed financial condition in agriculture in this state has been immediately reflected in financial low spots in the business and industrial life of our cities.

At all times apparently recognizing and appreciating their political and industrial strength, the cities have been prone to ride roughshod over the bending backs of the patient and long-suffering producers of wealth from the soil. They have reluctantly condescended to accord to him adequate recognition and consideration only when in utter desperation he has arisen in his pristine strength and vigor and inaugurated what history has been pleased to characterize as an "agrarian revolt."

This lack of vision and sympathetic understanding of the mutuality of interest existing between the city and the country is strikingly manifest in the present movement on the part of the municipalities to possess themselves of electrical distributing facilities irrespective of the irreparable injury which may result to the outside territory.

I APPRECIATE the fact that the moving incentive to municipal ownership usually is the desire for lower rates. With this desire I am in full accord, but in my judgment, this fi-

¶ "IT *is true that the consumers in the cities are, through their rates, at present partially helping pay the cost of service to the rural sections if allocable service costs are spread on the basis of averages. . . . The loss of the city load to the present utilities will remove this means of support to the rural areas. These rural areas will then be thrown 'on their own.' Their rates will have to be raised, if they are to pay their full way, instead of something in excess of increment costs as they now do.*"

nancial gain is only temporary and must eventually entail general community losses out of all proportion to the savings attained by the municipal consumers.

I believe it is high time that the good people of our cities raised their sights, emancipated their vision from the restraining influence of municipal consciousness, and looked more critically and sympathetically toward the country. In counting the prospective gains, which they hope to enjoy through municipal ownership, they should carefully weigh the costs and conscientiously measure the injury which in all probability will result to the agricultural population. The farmer is entitled to this consideration; the farmer is entitled to a new deal, and I most earnestly and confidently hope and trust that the farmer will not become in California, "The Forgotten Man."

To Appear in Coming Issues of This Magazine—

What's Wrong with the Utilities

—and what the state commissions should do about it

By Gifford Pinchot

Common Fallacies about the "Average Cost" of Distributing Power

By Hudson W. Reed

The Outlook for the Investor in Public Utility Securities

By C. F. Blanchard

The Pending Conflict between State and Federal Regulation

The radio, air, motor, and pipe-line services

By Aaron Hardy Ulm

The Coming Rôle of the Utilities in the "General Welfare"

A prophetic survey of what lies ahead of the industry

By Jay Franklin

New Jobs for the Commissions

Current trends toward the regulation of industries not heretofore classified as public utilities augur an era of increased expansion of authority of the regulatory bodies.

By T. E. SHEARER
ASSISTANT PROFESSOR OF POLITICAL SCIENCE,
THE PENNSYLVANIA STATE COLLEGE

THERE is ample evidence on hand to warrant the assumption that the phrase, "affected with a public interest," is to take on a new meaning. Even now, Justice Waite who first used the phrase in the United States, would be astounded to discover the businesses to which the phrase already applies; and additions are being made every year.

In the final analysis, the courts have reserved for themselves the determination of what businesses shall be classified as public utilities, or "affected with a public interest." Nevertheless the decisions in the past would indicate an interpretation of the judicial phrase to encompass such industries as economic necessity demands shall be so included. Thus while, out of deference to the courts, we shall be forced to move slowly in public utility regulation, movement is inevitable.

While the courts have adhered to the phrase as descriptive of those businesses which may be regulated as public utilities, it is difficult to draw any general principles from the cases in which this problem has been discussed. Certain features, however, have generally been present in most cases. In all instances, the product was one very necessary to the continued welfare of the public and in most instances the companies have exercised a monopolistic control over the product or have been the beneficiaries of government aid. Because these features embody very general principles, the difficulty accompanying an attempt to apply them to specific cases become apparent.

TURNING to the purpose of public utility regulation we find it logical that when a company has a monopolistic control over a public necessity, governmental supervision should be exercised to insure a continuous supply of that product at a reasonable price. Because the power to control even a portion of the supply lends itself to a manipulation which may be

detrimental to a dependent public, a complete monopoly has never been a prerequisite to regulation. The attempt has been made to prevent any person or company from securing such control of the supply of a necessity as to permit manipulation of that supply in order to increase prices. If, for economical reasons, monopolistic control is permitted, the state has attempted to prevent manipulation for price-raising purposes. Upon such a basis then, and with such a purpose, it is clear that the field is one of constantly changing applications.

These changes are particularly apparent in this period of economic stress. The problem of unemployment which has taken such a prominent place in our present-day discussion is decisive evidence of the dependence which our modern industrial system breeds. In changing the manner of conducting our businesses and in adding new industries and products, we have placed a new interpretation upon the word "necessity." No longer is it possible for an individual to exist by the labor of his own hand. We have not only created new products and made use of those products universal, but the continued use of those products has resulted in an absolute dependence upon their availability.

Also, the public is becoming not only more dependent upon the producer of these economic necessities, but the satisfaction of these demands requires an increasingly larger organization which in turn necessitates a larger outlay of capital. The individual consumer, then, in relation to the immense organization and personnel needed to operate a producing company, is becoming less and less important. Not only is the consumer finding his position one of great inequality, but with the increasing size of the company serving him, the influence of the individual is being decreased.

SINCE individual action is productive of little value, the consumer turns to the government for protection. If prices are unreasonable or if service is faulty, the individual seeks some measure of concerted action; this inevitably results in the use of governmental machinery. A survey of the past would indicate that this has been the natural course of events and there is no reason to believe that there will be any change in methods or results.

The increasing inequality of the individual, the decrease in the number of companies engaged in the production of necessities, and the certain demand for concerted action, must inevitably result in an increase in the field of governmental regulation. This increase will certainly take the form of an extension in public utility regulation, since to classify a business as one "affected with a public interest" and to term it a public utility, makes possible types of regulation which are not possible under any other classification. Public utilities, in most instances, are subject to state supervision in the matter of charges and standards of service. It is logical to suppose that extended public utility classifications will follow the demand for regulation which provides continuity of utility service at reasonable rates.

In the field of transportation, there is little doubt but that as each new method of transportation is developed, classification of that new business as a public utility will follow. Thus, steam and electric railroads have been so classified and regulated. With the introduction of motor carriers, it was inevitable that the phrase "affected with a public interest" should be so interpreted as to include busses, motor freight carriers, and taxicabs. Nation-wide adoption of this classification will certainly follow. By analogy to other carriers, pipe lines become public utilities, and airplanes, as they come into general use, undoubtedly will bear a similar title. Already regulations have been extended to airplanes under the powers given to Congress to regulate interstate commerce. This indicates that they are to be treated much the same as the established transportation systems.

That each new means of transportation has become a necessity is demonstrated by the virtual dependence which people have come to place upon busses, taxicabs, commutation trains, and electric cars for daily trips to and from work. Competitive conditions in these fields are seldom productive of great value and natural conditions themselves, namely, the costs of production and distribution, tend to eliminate competition with the resultant monopolistic control. Any new method of transportation which is generally accepted and used by the public lends itself to public utility classification and regulation. We may expect that the phrase "affected with a public interest" will be enlarged to include any newly developed transportation methods or systems.

The problem of transportation illustrates the manner in which the public changes its mode of living to suit newer conditions and the ease with which a new product is adopted and used. This adoption is particularly noticeable in the fields of light, power, and fuel. Thus it is that gas and electric companies have come to be producers of necessities. The average home could not be managed without their advantageous connections. Natural gas companies, for a time outside the field of governmental regulation, have been classified as public utilities. Should a newer fuel (such as the utilization of the sun's rays) be developed, there is every reason to believe that the companies engaged in the transformation of that energy into a form to meet commercial needs, would find themselves subjected to supervision by public service commissions. The development of central heating units adaptable to large cities creates another utility similar in nature to water companies.

¶ "As *the companies which operate chain stores are dealing in necessities in most cases, they are already facing much agitation for regulation in some manner. The most effective method of regulation will be to classify them as public utilities and, therefore, subject them to minute and careful supervision.*"

In much the same manner, telephone and telegraph companies, since their adoption for general use, have been regulated as businesses "affected with a public interest." Little attention has been paid to the radio in the field of public utility regulation, principally because the scope of its activities have been nation-wide. Though this power is similar to that exercised by the states in the public utility field, the supervision of that method of communication has come within the province of the national government under its power to regulate commerce. Television, while as yet underdeveloped from the standpoint of general commercial purposes, is rapidly passing through the experimental stages and it is to be reasonably expected that the use of that method will shortly become rather extensive. The same situation, however, exists here as in the radio field; the national tendency of the business lends itself to Federal supervision. Should the radio or television become sufficiently local in nature, classification of these agencies of communication as public utilities would naturally follow.

BEGINNING with the transportation systems, and advancing to the communication, and fuel and light-producing companies has been a logical step, there has been little need for justification of these extensions of governmental control. The problem becomes more difficult when it is desired to add to the list of public utilities a business of an entirely different type.

This problem is illustrated in connection with the chain store as a distributor of merchandise on a retail basis. Many of the elements which are most often looked for in utilities are lacking in retail merchandising, but certain vital factors are present. The independent merchant is finding it increasingly difficult to meet the competition offered by the chain store and it is conceivable that the day is not far distant when the small retail merchant will have been displaced. Many of the larger firms are adopting such methods of display, advertising, and selling, that it is no longer possible for a man without large financial means to enter the field. If this is true, it follows that the field is becoming rather limited and limitation means monopoly. Of course, monopoly will undoubtedly never exist to its fullest extent in all fields of retail merchandising, but the tendency to seriously close the business except to a few will foster monopolistic growth. As the companies which operate chain stores are dealing in necessities in most cases, they have already been subjected to regulations through the use of the state's taxing powers. The most effective method of regulation will be to classify them as public utilities and, therefore, subject them to minute and careful supervision.

While the control of drug stores, grocery stores, and other chain systems seems an unwarranted addition to the list of businesses "affected with a public interest," the trend at least, is indicated by the efforts to classify companies operating gasoline stations, as public utilities. Because gasoline is a modern necessity, it was asserted that the companies should be consolidated, given a monopoly and thus, under proper supervision, provide against the great duplication of serv-

Industries toward Which the Arm of Regulation Is Reaching:

"If the state is to be permitted to regulate as public utilities, not only those businesses which have a monopolistic control of a necessity, but also those in which multiplicity of establishments makes limitation of production or number advisable, there will be few exceptions. There are, it is granted, too many grocery stores, drug stores, gasoline stations, milk distributing agencies, and other enterprises to serve the public in the most economical manner."

ice and stations.[1] The saving thus effected, would be turned back to the consumer in the form of decreased costs, with the public service commissioners exercising the surveillance necessary to insure that the public would be protected. The court rejected the attempt to make this classification, but the dissenting minority, in the future, may become a majority and the classification then be permitted.

THE degree to which the public has come to depend upon the products and services listed above is apparent, but the extension of governmental control has been suggested in certain other fields in which the public need is not so obvious. Thus it has been suggested that public utility classification be applied to newspapers[1] and news distributing agencies. The method of reasoning by which these businesses are to be so classified relates to the necessity of the people in a democracy in having material at hand with which to form unbiased and unprejudiced opinions concerning political and economic questions. The dependence of the public upon newspapers for facts and opinions cannot be overemphasized. It follows then, that a large measure of public opinion is formed as a result of the particular newspaper policies. Suppression of news, and distortion or coloring of stories, will inevitably lead to a misinformed public. Since the principle of our government is control by the people, the governmental action resulting from the public's misinformed views is apt to be detrimental, or at least partisan. So vital has the newspaper become in the operation of our democratic system, that many have advocated operation and ownership of

[1] The United States Supreme Court has declared that neither the gasoline nor newspaper enterprise is "affected with public interest."

the newspapers and news distributing agencies by the government. With such a movement existent, it is apparent that regulation as public utilities is only the more conservative method of handling these businesses.

In a somewhat similar field—amusements—the courts have denied the legislatures the right to place theatres in the public utility category; however, a vigorous minority indicates that perhaps this field is not to be closed for long. Theatres, especially the movies, are attracting a large patronage and they have come to fill an important place in our educational system. This would indicate that the courts cannot withstand for long the demand for regulation of theatres as public utilities.

The question has been submitted to the United States Supreme Court with relation to the attempt of the legislatures to regulate the charges made by employment agencies. A conservative majority of the court discouraged the attempt, but again a dissenting minority in the future, may become a majority. This would not only open the door to regulation of employment agencies as businesses "affected with a public interest" but would permit the regulation of labor conditions and contract generally.

One state has already attempted to enforce compulsory arbitration of labor disputes in certain industries which they termed public utilities. The public, it was alleged, is interested in maintaining a continuous supply of such articles as food, and those disagreements between laborers and employers which affect the steady supply of those products should be under the control of the state. The court declared that labor contracts were beyond the scope of legislative control, but there is no assurance that such a position will not be forsaken as the interest of the public becomes more vitally affected by a disturbance of their supply of necessities.

Along the same line, as the population of the cities tends to increase, the problem of housing becomes more and more important. Suitable housing conditions are desirable if the interests of the people are to be properly served and protected. Just as those agencies of transportation which became necessary in the trips from home to work were called public utilities, so we may logically expect that another factor in the living conditions of the people may find itself "affected with a public interest." The desirability of having tenantable apartment houses renting at reasonable prices may result in the companies, engaged in such a business, being classified as public utilities.

It has long been recognized that banking activities are in the nature of public services, as the well-being of any community depends upon the continued stability of its banks—as the recent bank crisis demonstrated. The present economic situation has emphasized again the need for a closer supervision of banking practices in order to protect the interests of the stockholder, the depositor, and the borrower. In many communities there have been (at least until recently) too many banks, and any period of economic stress is apt to result in the closing of some of them. This is true since the overabundance of them re-

sults in none being sufficiently well fortified to withstand even brief withdrawals. Of course no method of state supervision can be expected to correct the situation sufficiently to insure against *any* bank failures or closings. Banking is, and will likely remain, very much a personal matter, and a certain measure of reliance must be placed upon a few individuals. If their judgment is mistaken, the institution is imperiled.

The question, however, has been recurring in the minds of many and they have asked why their money should be entrusted to the judgment of a few men. These men too often have little banking experience, and are under the most casual state supervision. Would it not be better, they have asked, to place the ultimate responsibility in the state by increasing the functions of the bank examiners and making them supervisors? If there are too many banks, is there any reason why monopolistic conditions should be frowned upon, providing proper assurance is given that the monopoly will not become oppressive? Certainly, in many cities there is little doubt but that as a result of the mergers, there is even now, little less than a monopoly. Assuredly it takes more capital than that to which most individuals have access, to establish a bank; those with an established business are left very much in control of the field.

Whether we can expect banks to be placed directly under the control of the Federal government or of states, and their internal affairs to be regulated in the manner of transportation companies, is problematical. Certainly the existence in many cities, of banks with arbitrary command of the capital and the overabundance of banks in other communities must inevitably result in a demand for a greater measure of protection for the depositors.

Insurance companies, already classified as public utilities, present a close analogy, as the basis for their classification was the need for protection to those who had entrusted their savings to the companies. It is granted that statutes providing for such regulation of banks might be difficult to administer and that the results would be very doubtful. This is particularly true so far as investment brokers are concerned. Yet, if we can judge the future from the past, we may well expect steps to be taken to meet the demand for such regulation.

THE classification as public utilities of the business of mining, the operation of cotton gins and irri-

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¶ "JUST *as those agencies of transportation which became necessary in the trips from home to work were called public utilities, so we may logically expect that another factor in the living conditions of the people may find itself 'affected with a public interest.' The desirability of having tenantable apartment houses renting at reasonable prices, may result in the companies engaged in such a business being classified as public utilities.*"

gation systems, has been permitted by the United States Supreme Court. In these cases, the industries cited were of peculiar importance in particular states, and the public was dependent upon their operation under proper conditions. Tourist parks and accommodation hotels, golf courses, the coal mining industry, and warehousing corporations are other businesses which have been scrutinized with a view to regulation in the matter of price and services. The phrase "affected with a public interest" lends itself to interpretation, and there is every reason to believe that state legislatures will avail themselves of its flexibility to extend their regulatory statutes.

We may inquire then as to what is to be the basis for further extensions. Upon what grounds will new businesses be added to the present list of public utilities? These questions receive extended consideration in the dissenting opinion of Mr. Justice Brandeis in the case of New State Ice Co. *v.* Liebmann, 285 U. S. 262, P.U.R.1932B, 433. The statute under consideration in that case provided that before a company or person should enter the ice business, a certificate of public convenience and necessity should be obtained. This certificate could be denied if the commission felt that the locality were already properly supplied; it should be granted only if the public interest would be thereby served. In effect the business of selling and manufacturing ice was declared to be a public utility. The majority of the court held the statute unconstitutional, but Mr. Justice Brandeis, speaking for himself and Mr. Justice Stone, felt that the state, in passing the statute, had not acted arbitrarily. It is his opinion which points the way to further public utility regulations.

In referring to the statute he says,

> "But where, as here, there is reasonable ground for the legislative conclusion that in order to secure a necessary service at reasonable rates, it may be necessary to curtail the right to enter the calling, it is, in my opinion, consistent with the due process clause to do so, whatever the nature of the business."

Then he sets out what is perhaps, the most significant part of his opinion. He would permit a state to use the certificate of public convenience and necessity as an instrument of economic control. He cites numerous authorities to show that economic competition is considered by many to have failed as a method of insuring to the public a continuous supply of necessities at reasonable prices. He indicates the problem of unemployment and the general effects of the depression, as evidences of an emergency existing in the United States. He would give the states considerable liberty in their attempts to cope with this emergency situation.

His opinion holds no optimistic brief for economic control by the state. Indeed, it expresses some grave doubts as to the workability of such a plan, but it does sanction experimentation by the states in the matter of restricting production.

He would hold with Mr. Justice Stone who asserted in Tyson *v.* Banton (1927) 273 U. S. 418, 71 L. ed. 718, that:

> "The very fact that it (the phrase, affected with a public interest) has been applied to businesses unknown to Lord Hale who gave sanction to its use, should caution us against the assumption that the category has now become complete or fixed

and that there may not be brought into it new classes of business or transactions not hitherto included, in consequence of newly devised methods of extortionate price exaction."

THESE statements would indicate that the phrase "affected with a public interest" is to have a new meaning. Not only are businesses to be added to the list because they are analogous to older public utilities, but if the doctrine announced by the dissent in the New State Ice Case is followed, new grounds for additions to the list are to be made. If the state is to be permitted to regulate as public utilities, not only those businesses which have a monopolistic control of a necessity, but also those in which multiplicity of establishments makes limitation of production or number advisable, there will be few exceptions. There are, it is granted, too many grocery stores, drug stores, gasoline stations, milk distributing agencies, and other enterprises to serve the public in the most economical manner. If the state is now to limit those who may enter these businesses to a number necessary to adequately serve the public, it will have undertaken an enormous task.

The size of the task, however, is apparently no deterrent. The list of public utilities is being gradually extended and the doctrine of the dissent in this latest case opens the door to a wider extension. It is undoubtedly true that classification and regulation of businesses as public utilities in many cases may result in action which is not only of little benefit, but which actually may be detrimental. Regulation of labor contracts and grocery stores in the matter of services and charges may be an unwarranted assumption of power on the part of the state. Control by commissions may be arbitrary, and in many cases unreasonable, but it is ignoring the facts to deny that public utility legislation and regulation is continually increasing.

With what Mr. Justice Holmes has termed the "force of public opinion" behind it, the program for the further extension of public utility legislation is not alone inevitable, it is imminent.

Common Fallacies Concerning the "Average Cost" of Distributing Power

During the ensuing months controversy will wage over the methods of computing the costs of distributing power from both privately owned and government-owned plants. The term "average cost" will figure largely in these arguments. Because of the misconceptions concerning this "average cost," PUBLIC UTILITIES FORTNIGHTLY will present a series of articles by HUDSON W. REED—beginning in the next number of this magazine—which will undertake to define the term in words that the layman can understand.

The Task Before the Federal Coördinator of Transportation

What the recent trend toward a more comprehensive Federal regulation of the carriers means to the state regulatory bodies and why the state commissioners may be vitally affected by the plans under consideration.

By RILEY E. ELGEN
VICE CHAIRMAN, PUBLIC UTILITIES COMMISSION, DISTRICT OF COLUMBIA

BEFORE us sprawls the gigantic railroad system of America, extending its mighty arms from the colossal centers of trade and industry to the tiniest hamlets of this country. Much duplication. High efficiency. Needless waste. All these things side by side or scattered everywhere.

A Coördinator has been appointed by the President, with the full authority of Congress, to arrange this bewildered system into an orderly, integrated, jig-saw puzzle with no extra parts. Just how can the Coördinator accomplish the task set for him?

State regulatory commissions should follow the plans of Mr. Eastman with exceedingly great interest as they will vitally affect state regulation, if carried out in accordance with the Emergency Railroad Transportation Act, 1933.

Arrogance of railroad managers was largely responsible for the enactment of laws creating state railroad commissions from which was evolved the modern public utilities commission. The Interstate Commerce Commission has gradually encroached upon the functions of the old state railroad commissions and with the creation of a Federal Coördinator of Railroad Transportation the last vestige of effective state control of railroads is removed. What remains will, indeed, be of little significance as contrasted with the powers originally conferred upon those commissions years ago by irate state legislators.

A DISPASSIONATE diagnosis of the ills of the great body of rail transportation will reveal that they are centered in certain companies which have for many years been the source

of the poison which has, seemingly, brought the great railroads as well as the lesser ones into the railroad hospital—the Congress of the United States. There they receive a periodic treatment of new laws designed to assist them in rendering more effective service at greater profit, with the ultimate objective of curing these recurring spells caused by dizzy, financial structures foisted upon them in their early life by financial magicians long since gone to their reward.

Given a fair opportunity, the managements of financially sound railroads today will pull out of this situation, as they have in the past. It is the poor and improvident relations of these which bring down on their heads these recurring plans for extensive operations, not only upon the affected parts but mainly upon those perfectly healthy, normal, and unaffected members of the railroad body. Judged by the fact that most of the railroad bonds are sound even in these times, particularly those owned by insurance companies and savings banks, the approach to the railroad problem has been entirely wrong.

No analysis of the railroad problem is complete unless it recognizes the invaluable historic rôle the railroads have played in the development of this nation.

In past decades railroads have opened millions of acres of land to cultivation and brought into being thousands of communities through the pioneer construction of their lines. Men and women have followed the trail blazed by the Iron Horse; they have invested their life savings along such highways and founded future happiness upon their faith in the permanency of such American institutions. All this is fully known. What is not generally recognized, however, is the later improvident methods used somewhat to continue dividends without at the same time extinguishing heavy existing debts. In the golden years that have passed, before traffic began to dwindle, when dividends were large, the owners of such railroads could have used a part of their surplus and reserves for the purpose of systematically canceling the long-term debt outstanding against lines of railroad with declining traffic, so that at the end of their remunerative life all obligations upon such lines would have been paid. Some of these lines can be abandoned now, with little injury to those who invested their money in property along them on the theory that such railroads would endure. Most of them, however remunerative, are highly important facilities to men and communities

It is not entirely the operating expenses of these lines which bear so heavily upon railroad credit but rather the interest charges on long-term debt which was not retired during the productive life of the property. Public service corporations usually insist on being currently reimbursed for property used up in the service through their rates, tolls, and charges which the public pays for the service; but such companies have not always been as insistent that their stockholders set aside a part of their *fair return* to amortize the outstanding obligations so that when earnings either ceased or became negligible the long-term debts and capital stock could correspondingly be reduced. If such com-

panies were required to amortize their outstanding securities in much the same manner as the public is required by law to pay for the property of such a company which is currently used up in the public service, financial distress would be reduced.

THE Interstate Commerce Commission recommended, and Congress passed, the Emergency Railroad Transportation Act of 1933 repealing the recapture provisions after an eighth of a century of shadow boxing between the Commission and the railroads over processes of recapturing the excess earnings, punctuated by long and argumentative decisions of the Commission, chiding the United States Supreme Court for its lack of appreciation of their problems and its failure to distinguish between the property rights of railroad owners and similar rights of utilities. In like manner, the Commission recommended and Congress modified § 5 of the act to regulate commerce so that it can now disregard competition between carriers in making consolidations.

Thus, again, a fundamental precept of state regulation has been cast aside and the maintenance of competitive routes, formerly regarded as an essential protection against monopoly, is to be disregarded.

Future service and rates on railroads will not be determined by the privilege exercised by prospective patrons to select the route most acceptable to him but will rest in the wisdom of the Interstate Commerce Commission and the generosity of the railroads.

THE acts of the Coördinator vitally concern the employees and their families, aggregating possibly five millions all told. But these are not all whose existence could well be seriously affected by orders such as would result from changes in operating conditions. Value of the property of individuals and corporations in many cities, towns, villages, and hamlets depend, to a varying extent, some wholly and others only slightly, upon the maintenance of the present scheme of railroad operations. For instance, communities frequently donated land free to railroads on the proviso that a division headquarters, a round house, a machine shop, or some other facility, be established there which would bring employment wages, wealth, and population to such a community.

The most effective form of saving possible is the consolidation and merger of rail lines into a minimum number of systems. Such a plan is variously estimated to produce economies running as high as a billion dollars annually. It is in the realm of possibility that such a large saving could thus be effected during a normal business period. To do so, however, would disrupt largely the hopes and

¶ "STATE *regulatory commissions should follow the plans of Mr. Eastman with exceedingly great interest as they will vitally affect state regulation, if carried out in accordance with the Emergency Railroad Transportation Act, 1933.*"

desires of many communities and change the outlook on life for millions of people. If ruthless economy and deadly efficiency must be called upon to their fullest, the Coördinator should work out a national plan of consolidation which, when complete in technical details, should be announced at least several years in advance of consummation so that the necessary economic adjustments may be planned well in advance by individuals, corporations, communities, and all affected interests.

IT would not be difficult to design a rail system from our present pattern which would be remunerative in good times and able to weather the financial storms in days of depression, then scrap the balance, say one third, of the mileage. A well-informed railroad man could easily redesign the rail terminal facilities and abandon many of them, with savings of millions of dollars in expenses of operation, fixed charges, and other items; he could rearrange the routes between terminals taking full advantage of the best, relegating others to the scrap heap or to inferior service. To do so would bring added profits to the owners of the property rights of the remaining railroads.

Such a plan would, however, entirely disregard human rights.

Those are largely technical questions depending almost wholly upon the ends sought or specifications and the liberties which the designer is allowed to take with the existing properties. Given the money necessary to accomplish the purpose, experts need not be dismayed by the problem of bringing into being a more economical rail system such as seems to be in the minds of some present-day railroad theorists. But how about the well-being of that vast humanity which came to dwell, to make their living, and to die along these lines of commerce, from the most congested terminal to the most lonely hamlet? Are their lives, their hopes, and desires, not a part of the things which must be considered by the superarchitect who is to fashion a new and modern transportation system?

BEFORE considering further the work proper of the Coördinator we can briefly consider with profit a popular fallacy of the hour, and that is wholesale abandonment of railroad property.

The year 1930 marked the end of a 10-year period during which the railroads spent in gross additions to or betterment to their property a sum of money nearly as large as the foreign debts due the United States. The urgent necessity for handling the traffic more expeditiously required this expenditure. During that period all plans were being made in contemplation of bigger and better business, confidently expected by experts in the railroad world. At present the opposite philosophy is advocated by nationally known persons but practical railroad men have so far not generally concurred in this new philosophy. Such authorities are already pointing to large blocks of railroad mileage, as high as one third of the total in one instance which should be abandoned. The present philosophy savors of the same lack of foresight by which the railroads came to be burdened with excess investment and long-term debt during the period 1921 to 1930.

A Fundamental Precept of State Regulation Is Discarded

"THE Interstate Commerce Commission recommended and Congress modified § 5 of the Railroad Transportation Act of 1933 to regulate commerce so that they can now disregard competition between carriers in making consolidations. Thus, again, a fundamental precept of state regulation has been cast aside and the maintenance of competitive routes, formerly regarded as an essential protection against monopoly, is to be disregarded."

The kind of railroad systems we are to have for the future should not be determined by the psychology of the depression.

AT the end of that almost forgotten period of prosperity from 1920 to 1930, railroads paid, with one exception, the highest average dividend on the greatest proportion of the outstanding capital stock in their history. Worthy railroads, conservatively financed and properly managed, are not now suffering nearly as much as other lines of business. While it is true that railroads are hard hit by the depression, they will recover from it rapidly as business picks up if it is left to them.

With the power of the Coördinator to rearrange the routing of railroads and discard what he believes to be surplus property, state regulatory bodies cannot be relied upon any longer by local communities to protect their needs. Heretofore, when an old established service was proposed to be discontinued by the railroad, or a new service desired by patrons, a station or other facility was proposed to be constructed or abandoned, the state utility commission would give relief from any injustice to those who had sufficient faith in the future of railroads to build their homes and rear their families along the trail blazed by the Iron Horse. However, all of the transportation needs are to be subservient, hereafter, to those of a national system of transportation, and will be determined by Federal instead of state regulation.

The existing system of conducting railroad transportation is reputed to be so obviously uneconomical and apparently inefficient; so palpably overbuilt and overcapitalized as measured in terms of present business; so widely known for its duplication of facilities, services, and effort; so unwieldy

and wasteful; that many professional fixers think they can each devise a railroad consolidation program which would be better than the existing operating system. In brief, a large group of such authorities seem to be of the opinion that nearly anything would be better than our present complicated systems of innumerable competitive operations. However, carriers which were not compelled to ask the Reconstruction Finance Corporation for financial aid in the payment of fixed charges, as well as some which did receive such aid, can, under the present competitive system with all its faults, work out their own salvation.

On the other hand, most of those who have asked for loans to meet fixed charges are hopelessly overburdened with bonds and other debts, (with certain notable exceptions) that only a revaluation of their securities' dollars in terms of their ability to pay will relieve them of similar financial embarrassment in future depressions.

THERE is a large mileage of unremunerative railroads, there has been such a mileage for several decades. There will always be considerable unproductive mileage. It is seldom that all classes of service rendered by a public service corporation are remunerative. Certainly there is a very wide difference in the return which such a corporation obtains from the services rendered different customers even in the same class. A company having a charter, grant, or privilege from the people to perform public service for profit cannot hope to be so blessed as to be required only to serve remunerative customers; it must serve all.

A Coördinator can very materially assist in the betterment of transportation providing there was whole-hearted coöperation on the part of railroad officials in carrying out the Coördinator's plans. For such a Coördinator to succeed he would have to know that his plans were being carried out, therefore, he should follow up his orders with an appropriate inspection service responsible only to him, to observe and report upon result of the orders of the Coördinator.

In addition to those duties specifically outlined in the Emergency Railroad Transportation Act, 1933, the Coördinator might study the probable effect on private initiative and possible economies to be effected through railroad owned and controlled plants manufacturing, producing, or furnishing materials, supplies, and equipment used exclusively by railroads. To begin with, the Bell Telephone experience and organization might be studied with a view to ascertaining the results they have obtained; and whether their system of ownership and control of such manufacturers is beneficial, both to the public and the private owners.

In order that substantial savings can be made to insure the sound condition of wisely financed railroad companies, it is unnecessary to go to the limits of such far-reaching consolidations with all the human wreckage it implies. Standardization of the different rules, methods, and practices now in use on all railroads on the basis of the best practices now in vogue will furnish a much needed source of construction and operating economies. This could be effected with little or

no labor losses. Reduction of investment in stocks of materials and supplies on hand will furnish further substantial economies. Refinancing those railroads which past history has demonstrated are unable to meet their obligations in times of stress would result in taking the railroads out of the United States Treasury. Reduction of surplus investment in stocks of materials and supplies presents no hazard to the employment of labor and yet can result in substantial savings.

THOSE lines of railroad should be refinanced which in times of economic distress never fail to bring upon conservatively financed and well-managed railroads the charges of incompetency and mismanagement, with the rehashing of all of the bad and little of the good history of railroad financing in this country and encourage threats of government ownership.

The bond interest should be adjusted on each of those lines to a limit which past history of earnings demonstrates each of the lines can afford to pay. If that happens to be nothing, then the bonds should all be exchanged for capital stock to which all net income, after the deduction of taxes and reserves, would be available. There is little or no use in temporizing with the Seaboards, the Friscos and Missouri Pacifics or the railroad world; a major operation only will suffice. A permanent and sustained drive should hereafter be made by the Interstate Commerce Commission against the continuous extension of bonds. The Bureau of Finance of that Commission should see to it that the ratio of bonds to stock are reduced to a point where all railroads can live through depressions without being embarrassed by their failure to make bond interest. I have long advocated such a policy and if it had been adopted during the recent period of high stock prices few, if any, reputable railroads would have borrowed any government money.

A STUDY of the capital structures of the operating telephone companies will disclose some large companies with no outstanding bonds and others with a relatively small proportion of bonds to total capital issues, and none with such unwieldy capital structures as the railroads have. If the railroads were similarly financed the government would not now be disturbed about their future, the expensive Reconstruction Finance Corporation could be relieved of a considerable part of its work, government aid now diverted to railroads could be used in other endeavors, the work of the Interstate Commerce Commission would be lessened and its appropriation lowered.

The bondholders of many lines of railroad would, no doubt, welcome an arrangement whereby they would obtain some relief. Their holdings if exchanged for stock which had been

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"revalued" on the basis of the latest content of the railroad dollar would at least be sound.

Why not diagnose the case of the railroads first and then write the prescription or prescribe the treatment? Most of the treatments, if not all, so far prescribed for railroads are based not upon a careful study or observation of the parts affected, but rather on the theory that the whole body is deformed and poisoned and, therefore, should either be asphyxiated, dismembered, or otherwise destroyed and a new and different creature brought into being.

So after all, the problem of the Coördinator does not lie in viewing the railroad map from a dirigible to see how he can move the parts around on the face of the continent, rather his problem is to select only those parts for treatment which past financial history demonstrates should be treated. It is not necessary to revalue the prosperous Burlington Railroad security dollar on the same basis as that of the never-too-prosperous Denver, Rio Grande and Western. The railroads as a whole have been subjected to stigma periodically because of the failure of certain ill-conceived railroad systems, some of which are generally in financial trouble If the Coördinator can once and for all time relieve those systems of their burden of debt and of surplus property, he would go a long way towards correcting these recurring periods wherein all railroads are blamed for the sins of the few.

A SOUTHERN railroad was for many years one of the most prosperous on this continent until another line was permitted to invade the territory. Both are now in the hands of receivers. The invader can never struggle out from under its load of debts, and the Interstate Commerce Commission should not attempt to assist it to do so, by permitting it to extend its lines to the destruction of other valuable and necessary railroads. Such railroads prevent the conservatively financed companies from rendering good and efficient service. The security dollar of bankrupt railroads should be deflated and illogical combinations of property redistributed to more wisely conceived systems.

The railroads should consider limiting the payment of dividends, and the government should require all railroads, no matter how prosperous, to devote a part of their cash surplus each year to the purchase of their own bonds to establish a depression reserve for use in future times of stress. Had such a reserve been established, it would have saved the long dividend records of many companies during the last three years. The Coördinator should study ways and means of establishing such a depression reserve.

The railroads by coöperation with each other should establish a research institute for the purpose of treating all questions of standardization, simplification, and other purely technical matters, the determination of which are of national interest.

The Coördinator could perform meritorious service for transportation by bringing about such a coöperative institute. The present excessive number of national bureaus and associations supported by the railroads could all be combined under a single head into a national department of railways. Technical experts are available

The Power of the Railroad Coördinator Supersedes Now that of the State Commissioners

"WITH the power of the Coördinator to rearrange the routing of railroads and discard what he believes to be surplus property, state regulatory bodies cannot be relied upon any longer by local communities to protect their needs. . . . However, all of the transportation needs are to be subservient, hereafter, to those of a national system of transportation, and will be determined by Federal instead of state regulation."

in the existing organizations. All that is needed is to give their work force and effect and to put the chairman of each of these groups of experts to work, instead of allowing them to make their committee work merely incidental to their other work. As a rough estimate, the railroads could well afford to spend at least $5,000,000 annually on such a national department of railways to keep themselves currently informed on the best practices in the construction, maintenance, and operation of railroads. Such a department would yield far greater dividends in the service than any other investment the railroads could make.

A committee should be appointed for the purpose of devising a standard form of organization covering similar functions on all railroads. A chart of such an organization would show the standard flow of work and responsibilities as well as number of employees required to perform the functions of the department. Even now offices created for the purpose of performing similar work on different railroads are overmanned as contrasted with each other. Yet, most offices are probably greatly reduced at present below the true line of economy and efficiency and more employees would probably result in greater actual economy.

STANDARD tests should be set up for used and useful property to serve as a guide for making retirements, or abandonment of existing property found to be neither used nor useful or rendering a needed or indispensable service to the public. Inadequate or obsolete property would also be included in such plans, as well as property not rendering a profitable service. Such a plan should result in saving in fixed charges and operating expenses aggregating from sixty to ninety million dollars annually. That is, providing that due attention is paid to the reduction of outstanding securities on property thus abandoned. Otherwise, the mere retirement of the property would result in little public benefit.

Rules, *criteria,* specifications, or standards should be promulgated which would be useful in the determination of the public convenience and necessity for rendering passenger,

freight, and switching services, together with *criteria* of the class, extent, and frequency of such service under varying conditions of revenue. This would bring about uniform and dependable service where such matters are now determined by different processes of reasoning on the various systems. A survey of present practices would furnish a basis for adopting the best and most economical method of measuring the needs of communities, as well as furnishing the type of equipment and frequency of the service necessary to meet those needs. Where service is both unprofitable and of little public benefit, its elimination would be most desirable. In other instances substitute services might fulfil the needs.

Regulations should be established which would permit one railroad to use the facilities of any other at cost for the purposes of securing its materials and supplies from sources not otherwise available. In the absence of such regulations, one carrier's operating needs are frequently sources of dividends for other carriers. Such regulations would permit one railroad to buy ballast, timber, crossties, and other materials at a source near to the place of use instead of hauling long distances over its own line to avoid commercial charges. Such a regulation would make possible coöperative agreements between carriers for joint use of the same sources of materials resulting, not only in saving transportation expenses, but also in obtaining more equitable prices from the producers, because of steadier and more constant employment of their capital. This would result in a more economical use of railroad facilities, such as timber treating plants, and, in some instances, water stations, coaling plants, freight and passenger stations.

Uniform rules for accounting for depreciation should be established on a simple basis, requiring infinitely less labor and expenses than either the present rules or the contemplated Interstate Commerce Commission order No. 15,100 now permits. At least by consent of the carriers such rules could be based upon past experience in the retirement of property and the establishment of retirement reserves. A specified maximum ratio of reserve to investment with a diminishing scale of annual rates of depreciation should be applied against gross revenue when the maximum reserve is reached on any carrier. Such scales are now in use by agreement with public utilities and they permit of the maximum of economy in labor required in the determination of debits or credits to the fund, at the same time maintaining an adequate reserve for future needs.

A pooling arrangement for earnings should be worked out, to require excess earnings to be used to reduce or wipe out the funded debt of carriers with unbalanced or unwieldy capital structures. Unless some device similar to old Section 15a is resorted to for leveling the effect of rate structures, private ownership and operation of railroads will eventually give way to public ownership and possibly operation.

The Coördinator should promulgate rules which would bring reciprocal purchasing to an end—such as the purchasing of materials, supplies, equipment, or services needed by railroads in exchange for routings of

freight. All purchases and contracts of railroads should be let on a basis comparable to that of the Federal government. Such rules would make it possible for officials of railroads to avoid the granting of purchase orders and contracts with companies either for the purpose of the soliciting of freight routings or because of long standing friendships.

METHODS of utilizing all railroad equipment to the best advantage of all carriers should be devised. Individual ownership of freight cars used in transporting revenue freight beyond the limits of the operating company's property should be forbidden. All such cars should be owned by a non-profit-making national car pool. Each carrier would have a proportionate share of stock therein and the daily distribution of cars should be directed by the needs of transportation. This would eliminate as much empty car mileage as possible, and permit of complete standardization of cars and their equipment so that materials for repairs and supplies on hand could be reduced to a minimum and the present inefficient and wasteful methods of individual ownership, accounting for car movements, for car repair, etc., could be abolished.

FINALLY, we cannot overestimate the value of having the Coördinator study ways and means of simplifying the present complicated and mysterious system of rates, tolls, and charges for freight. At the outset, the maze now existing should be abolished entirely, and a system which is simplified and easily understood should be established, thus saving at least the souls of the many who are likely to be condemned to eternal punishment, should they earnestly attempt to decipher the code of hieroglyphics otherwise known as the railroad system of rates. These rates are the outgrowth of an ancient history of railroading. While rates of virtually every kind of service furnished by public service corporations are paid for on a measured and intelligible basis, the largest single item, freight rates, still remains on a basis which is incomprehensible to anyone, save the enchanted few.

BUT we must stress again the human side of our problem. While the potential savings would be large, if we forsook the sincere, faithful legions of those who have been long gainfully employed, together with the vast population dependent upon them, the inevitable social losses would far outweigh the economic gains. To attain accomplishments without regard to the well-being of our fellow men is to accomplish less than nothing. After all, this world is only a temporary abiding place for the human soul. We are born here, we strive to live with as many of the human comforts as possible, and to benefit each other as well as those who follow. Thus, the end of all accomplishment is more tolerant and more human associations, where one man's gain is not another man's loss.

Judged by the tribulations of America during our prolonged depression we can safely say no solution of the railroad problem is based upon sound public policy if it does not proceed on the assumption that our primary criterion of accomplishment is to be gauged not by financial gains but by the maximum amount of happiness.

The Pending Conflict Between State and Federal Regulation

No. II: The Electric Power Utilities

In the first article of this series the author outlined the conflict between the state and Federal regulatory bodies in regard to methods of depreciation accounting as applied to the telephone services. (See PUBLIC UTILITIES FORTNIGHTLY *of July 6, 1933.) Article III of this series will treat of the problem of regulatory motor carriers, gas utilities, and other services.*

By AARON HARDY ULM

OVER the right to regulate the public utilities will the next, and perhaps the last, major battle be fought in the ancient war between state authority *versus* Federal authority.

The struggle will revolve largely around the electric light and power industry. The issue is political, legislative, and legal. The courts are constantly adding to and subtracting from the problem by decisions relating to the constitutional powers and lack of constitutional powers of the states. The United States Congress keeps the issue in suspense, awaiting no doubt a definite political decision about what should be done. The tide of battle in the political arena runs, at least textually, against the states.

After quoting from the last national platforms of the two big parties, John J. Murphy, of the South Dakota Board of Railroad Commissioners, said to the 1932 convention of the National Association of Railroad and Utilities Commissioners (of which organization he was then the retiring president):

"If legislation in accordance with either party platform shall be enacted, it will be largely destructive of state power of regulation over utility services."

Both party platforms called for Federal regulation of rates and charges for electricity transmitted across state lines. But interstate transmission is only one of the factors that enter into the question of whether the Federal government should further extend its invasion into the field of

utility regulation; a more important factor is the holding company. For the regulation of that, one of the party platforms called specifically.

THE Federal government entered the field of utility regulation over a quarter of a century ago when the Interstate Commerce Commission was given authority to deal with interstate rates of telegraph and telephone companies. There has been practically no exercise of that power. Only in the matter of telephone company accounting and the fixing of depreciation rates, under the Transportation Act of 1920, has the Interstate Commerce Commission undertaken to do any comprehensive regulating of the wire communication companies. That issue probably will be fought out in the courts.

Only over electric power projects licensed by the Federal Power Commission does the Federal hand now exercise regulatory control. So far that hand has been used only slightly in respect to rates, securities, and other items that come within the regulatory activities of the states.

The regulation of electric light and power utilities has been an exclusive function of the states. But even in that field there is a No Man's Land either of no regulation at all or else of inadequate regulation. This may be attributed to the failure of some of the states to go as far as they might into that sphere and also because of conditions with which the states have not been able to deal legally.

SOME indication of the complexity of the problem which confronts the state commissions lies in the fact that the task of regulating interstate transmission of electricity is divisible into at least three parts. The first has to do with the transmission of power across state lines by companies which perform all of the functions of production and distribution. The second has to do with sales by a company which produces power in one state and transmits it to an independent distributing company in another state. The third has to do with sales by a producing company in one state to an auxiliary or affiliated distributing company in another state.

So far as determined by court decisions, the rights of the states vary with each type of interstate transmission. It is yet to be determined whether a holding company can be classed as a utility, and it is still to be decided whether regulation, when and if applied to it, will be for the protection of the investors or of the consumers, or both.

Generally speaking, the states have stood out against Federal entry into the field of electric light and power regulation. State regulatory officials have been almost unanimously opposed to it. Some of the states' regulatory spokesmen have been intimating lately, however, that the states need at least a bit of aid from the Federal government in the regulation of big electric power companies. In all probability such Federal aid will mean Federal participation in the actual authority and work of regulation. And if history repeats itself, as it has in the past, injection of the Federal hand into the field of electric light and power control will be a prelude to Federal government supremacy in that big field of regulation.

"It is the essence of this (Federal)

power that where it exists it dominates," the Supreme Court of the United States has said.

In so far as they have expressed themselves, state utility commissioners have opposed specific legislative proposals, like that in the Couzens bill of several years ago, of Federal invasion into the general field of electric light and power regulation. However, while those who discussed it denounced it, even the Couzens bill was not wholly condemned collectively by those officials. Referring to the noteworthy measures put forth by the Michigan Senator for extending and establishing Federal regulation over both the communications and the electric power utilities, the National Association of Railroad and Utilities Commissioners went only so far as to say that it was

> " . . . unalterably opposed . . . to any enlargement of the Federal authority by the creation of new agencies or the enlargement of the authority of present agencies whereby the regulatory authority of state commissions would be interfered with in a field where they are now adequately functioning."

The two last words leave a door open for a further advance of the camel's nose of Federal regulation into the tent of utilities control. Those who adhere to the state rights doctrine would say that a state itself is the judge of how much regulation it wants and needs. One state, for example, has no regulatory commission at all. Is it the right and duty of the Federal government to interfere in case that state persists in exercising no control over its public utilities?

Whether state commissions function "adequately" in any field depends largely on two factors: (1) the facilities and powers provided them by state legislatures, and (2) the extent in which the Federal Constitution as construed by the courts permits state bodies to go in the twilight zone between state and Federal authority.

Said James A. Perry, of the Georgia Public Service Commission, at a convention of the National Association of Railroad and Utilities Commissioners:

> "I make bold the assertion that if the states had provided proper regulation both as to rates and service for the railroads, with such uniformity as is entirely possible, we would have had no need for Federal regulation."

Says C. M. Clay in a recently published work on "The Regulation of Public Utilities":

> "Only thirty-three states have granted authority to their commissions to prescribe a standardized system of accounting. Only twenty-five states exercise supervision over the issuance of securities. Fewer still are authorized by law to assert control to any considerable extent over the use of funds raised so as to restrict expenditures to legitimate purposes advantageous alike to the consuming public and to investors."

Apropos the regulatory bills which bore his name, Senator Couzens of Michigan said:

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¶ "Federal *aid will mean Federal participation in the actual authority and work of regulation. And if history repeats itself, injection of the Federal hand into the field of electric light and power control will be a prelude to Federal government supremacy in that big field of regulation.*"

"Some regulation is necessary for those electric companies which import power for distribution in those states whose commissions cannot or will not regulate them."

It would be well for those who would keep the Federal hand out of utilities regulation to remember the warning put forth by Elihu Root a quarter of a century ago to the effect that the "government control which they (the people) deem just and necessary they will have either from the state or the National government."

THERE is little question but that inadequate state regulation, together with regulation of a conflicting character, has been the force behind Federal advances. But opposition to those advances is often weakened by court decisions concerning the powers of the states under the Federal Constitution. Present demands for Federal regulation of interstate transmission of electricity and of the operations of utility holding companies arise in part from a widely held conviction that, under the Federal Constitution as construed in some noteworthy cases, the states cannot deal adequately with the relations of interstate transmission and holding companies to purely intrastate utility affairs. However, that conviction does not prevail commonly in quarters where the matter has been given thorough study. A Massachusetts legislative commission which went deeply into the question found, in 1930, that "Federal regulation is not now necessary and the states may well proceed toward the establishment of a coöperative basis of interstate power regulation."

Yet at about the same time the Massachusetts investigators were arriving at that conclusion, state regulatory officials, in convention assembled, verged on asking for Federal regulation of interstate movements of natural gas through pipe lines. Such a request would have been analagous to a demand for Federal regulation of interstate transmission of electricity, for the principles as to both are largely the same.

SENTIMENT for Federal regulation of pipe lines was stirred up chiefly by United States Supreme Court rulings (as in the so-called Kansas Natural Gas Company and the Narragansett-Attleboro Cases), to the effect that there are points beyond which the state regulatory authority cannot go in dealing directly with interstate transactions which affect phases of intrastate regulation. In the gas case the court held that a state commission could not stand at the state line and impose "its regulation upon the final step in the (interstate) process at the moment the interstate commodity entered the state and before it had become part of the general mass of property therein." In the Attleboro Case it was held that a state could not put "a direct burden on interstate commerce" by decreeing an increase in the rate at which a utility within the state's borders sold electricity in wholesale quantities to a distributing utility in another state.

In both cases there was a nubbin of the element of conflicting state regulation which had much to do with the shifting of full regulatory control of the railroads into Federal hands. For, as the court pointed out in the Attleboro Case, if one state might order the raising of rates against consumers in another state, the latter

Where Federal Regulation Enters, It Dominates

"In so far as it has expressed itself at all, the Federal government has evinced little desire to assume a dominating rôle in the realm of utility regulation. . . . But once in a sphere, the tendency is for the Federal government hand to reach farther and farther, ultimately to the exclusion of all other hands."

would be within its rights in ordering a lowering of rates against producers in the first state. In such a situation there would be cause for regulatory "wars" between the states as sometimes have occurred.

In the gas case, the court said:

> "With the delivery of the gas to the distributing companies . . . the interstate movement ends. Its subsequent sale and delivery by those companies at retail is intrastate business and subject to regulation. In such case the effect on interstate commerce, if there be any, is indirect and incidental."

It had been held in the so-called Pennsylvania Gas Company Case that when a company produces in one state and distributes in another, the latter state may exercise full control of rates charged within its borders. In the Illinois Bell Telephone Case, the court held that a state commission may require a showing as to costs to a holding or affiliated company of interstate services rendered to a subsidiary local company. In this and the Western Distributing Company Case the Supreme Court of the United States sustained the right of a state regulatory body to pass on practically any transaction between a subsidiary local company and a parent or affiliated company, even though involving interstate commerce. The rulings in those two cases go to the core of the holding company equation in so far as it relates to state regulation of intrastate services and rates by companies that are subordinate to ones of interstate character. On this point Harry G. Wells, of the Massachusetts Department of Public Utilities, said at the last meeting of the National Association of Railroad and Utilities Commissioners:

> "Does it make any difference whether we regulate holding companies and tell them how much money they shall collect from the operating companies, or whether we say to the operating companies, 'You shall pay only so much money to the holding companies?' Does it make any difference whether we say to the holding companies 'You shall enter only into certain contracts and those contracts must be approved by the commission,' or whether we say to the operating companies, 'Any contract that you enter into with holding companies or anyone else shall be subject to the supervision of the commission?' "

A contrary view was presented, notably by Hugh White, of the Alabama Public Service Commission, who said:

> "I will not yield to any of my brethren in their desire to prevent unnecessary extension of Federal authority into state affairs where under our basic law the state can regulate and prevent wrongdoing, but I have been unable to see how effective

supervision and regulation of the issuance of utility holding company securities can be brought about except by Federal authority."

AFTER holding that the "inherent powers of the states should be developed and exercised without being surrendered to a central bureau," the association of commissioners declared that state regulation of transactions between holding companies and affiliates "may be greatly helped if the powers of the Federal government can be utilized in determining facts as to relationships and business arrangements between utilities and affiliated interests." This was a concession to a feeling within state regulatory circles for injection of the Federal hand of regulation into what probably will be the last realm of exclusive state regulation—that of electric power.

The haunting question remains as to how far that hand of Federal regulation will go. "There is little question that the opposition of state commissions to any Federal control over interstate commerce in electric power is based largely on the fear that such control will be extended even over large portions of intrastate business," says Professor Hugh Langdon Elsbree in his work on "Interstate Transmission of Electric Power."

IN so far as it has expressed itself at all, the Federal government has evinced little desire to assume a dominating rôle in the realm of utility regulation. In fact, the historical record shows that the Federal government rarely has rushed eagerly or hastily into a new sphere of active authority. In times other than ones of emergency, cautious Uncle Sam has withheld from new fields of regulation until he is forced—usually over his better judgment—to enter them. The Interstate Commerce Commission as it now stands is the product of an evolution running through a half century of time. The incidents of that evolution lagged behind public demand, if not necessity, as some pending ones do now. It took many years of agitation, marked by scarce division of opinion as to essentials, to bring the Federal Water Power Act into existence. A rampant demand from nearly all concerned quarters, including that of the states, for Federal entry into the field of motor vehicle regulation has been in suspense now for nearly a decade. The vast Federal inquiries as to the electric power utilities and holding companies now underway are, in a sense, stop gaps of delay brought about by the Federal government's reluctance to extend a regulatory hand into the general sphere of the utilities.

But once in a sphere, the tendency is for the Federal government hand to reach farther and farther, ultimately to the exclusion of all other hands.

It is doubtful that Congress will authorize further extensions of the Federal regulatory hand over the utilities so long as, and if, the states and the affected industries oppose it. There is no question as to the opinion of the electric light and power and the illuminating gas industries. That opinion is firmly opposed to Federal regulation. But one cannot be so sure as to the opinion of the states. Examination of the records probably would reveal that, in practice, the states themselves have been the greatest foes of state rights.

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

ARTHUR E. MORGAN
Chairman, Tennessee Valley Authority.

"The Tennessee Valley Act is not perfect."

B. C. FORBES
Financial writer.

"The new Securities Act has practically paralyzed new financing."

CLARK MCADAMS
Newspaper man.

"There is not a commission in a state of the Union that can regulate the utilities."

JOSEPH B. EASTMAN
Coördinator of Railroads.

"The adoption of a code for railroads under the NIRA would not be wise, even if it were legally practical."

HENRY A. WALLACE
U. S. Secretary of Agriculture.

"One of the most disturbing things in Washington today is to see how the so-called radicals approach things in a mean, brittle manner."

WENDELL L. WILKIE
President, Commonwealth and Southern Corporation.

"In the utility industry, as an average, there was a 5 per cent write-up of property value during the period when there was a 115 per cent write-up in the value of farm lands."

SAMUEL MORRIS
Lawyer.

"Some utility commissioners are bankers, and during the recent financial crisis and prior thereto they required the utilities to deposit funds in their banks to help them to withstand runs."

A. A. BERLE, JR.
Economist.

"It is easy to talk of the government 'taking over' this, that, or the other thing—railroads, for instance. It is quite another thing to build an administrative organism which will handle these problems."

CLARENCE E. MARTIN
President, American Bar Association.

"When the powers of the states are destroyed, this will be a government administered from the top down, whatever its form. Carried to its logical conclusion, its adoption would pave the way for the substitution of state socialism for social justice, and social democracy for our republican form of government."

What Others Think

Cows Come under Utility Regulation

THE Little Boy Blue of today is finding that it takes a great deal more than blowing his horn to straighten out the problems of his troublesome cows. The milk strikes in the Middle West in 1932 and in New York state in 1933, accompanied by the destruction of life and property, have made milk distribution a serious public question. State by state considers the passing of legislation designed to place all phases, from this business from the cow to the consumer's coffee, under public regulation. The climax came on September 5, 1933, when Secretary of Agriculture Wallace departed from his prepared speech at the State Fair in Syracuse and asked point blank:

> "Should we not begin to deal with the milk industry as a public utility?"

Had this question been asked five years ago our Legal Authority would have adjusted his spectacles and peering over his book shelf of *United States Reports,* picked out Volume No. 262 and turned to page 522,—Wolff Packing Co. *v.* Kansas Court of Industrial Relations (P.U.R.1923D, 746). He would have explained to us that this opinion by the late Chief Justice Taft expressly refused to sustain the constitutionality of a Kansas statute which attempted to subject the "private business" of preparing "food for human consumption" to utility regulation.

But today even our lawyers are made to take Secretary Wallace's question seriously. Early in September, Justice O'Donoghue, of the District of Columbia Supreme Court, dismissed the plea of two Illinois dairy interests which sought to restrain Secretary Wallace, as administrator of the Agricultural Adjustment Act, from enforcing the Chicago Milk Shed Agreement requiring milk retailers in that city to sell milk at 10 cents a quart. Justice O'Donoghue stated in the course of his opinion:

> "The day has passed when absolute vested rights in contract and property are to be regarded as sacrosanct and above the law. Neither the necessities of life nor commodities affected with a public interest can any longer be left to ruthless competition or selfish greed for their production and distribution."

Six weeks before that, Chief Justice Pound of the New York Supreme Court upheld the disciplining of a Rochester grocer who, to evade the New York Milk Board's regulations, gave away a loaf of bread with every quart of milk he sold. The grocer contended that he had the right to run his own business to suit himself, but the court felt that it was quite constitutional to limit individual freedom by "the policy of compulsion for the general welfare." Commenting on the District of Columbia decision, the *Newark* (N. J.) *Evening News* stated:

> "This decision is going higher, and in all probability will reach the United States Supreme Court. Whether the individual agrees or disagrees with all the implications of the quoted portion of the O'Donoghue opinion, he must recognize the need of a final authoritative ruling on such issues. They are inseparable from the strange new laws we are living under, and the answers to the questions they ask have a very important bearing on what kind of country this one is going to become."

IN the course of his address at Syracuse, Secretary Wallace stated:

> "It is an evasion to say that our milk troubles are caused by Communists, gangsters, or others who do not care for our present efforts to repair capitalistic society and put it in decent running order. Such

people are more nearly the product of economic disorder than the cause of it. The real trouble with the milk industry traces to strife within the milk industry, strife and maladjustments that extend all the way from the milking-stool to the consumer's doorstep. The responsibility rests upon the men in the industry, and not upon lawless outsiders, whipping the thing along and sniping from the sidelines.

"Racketeers, anarchists, and other enemies of our disordered society do not want to see order restored, so naturally they pick and claw at every sore spot of our present economic system. Milk production and marketing is a very sore spot. Let us try to understand why."

Pointing out the history of what he considered overexpansion of dairy facilities in this country since 1920, together with the present diminished buying power in the urban centers, Secretary Wallace laid the whole blame for the existing trouble on the failure of farmers and distributors to adjust their production and distribution program to meet the prevailing conditions. He concluded:

"Dairymen may well consider the imposition of a processing tax in the near future, the proceeds of which tax might be used among other things to control production. The details of such a plan must come from the dairymen themselves. All we can do is to acquaint you with the facts and the powers of the Agricultural Adjustment Act. It is your duty to figure out how those powers can be applied to your situation."

Commenting editorially on Secretary Wallace's speech, *The Wall Street Journal* declared that it marked a narrowing of the field of what was looked upon as "private business" with a corresponding enlargement of the field of "utilities." It stated in part:

"That means that 'rugged individualism,' much as we admire it, must give way to the public welfare. Ordinarily a definition of 'public welfare' would mean matters connected with the lives, health, safety, or morals of the people. But in the New York case the real motive back of the law was largely commercial, even though the legislative statement of policy recited the usual grounds for exercise of the police power. Milk forms a great industry in New York and the conditions within it contributed towards the depressed state of business. In fact, the court said that the legislature was dealing with a paramount industry upon which the prosperity of the entire state in large measure depended."

In connection with this discussion, Mr. James E. Boyle wrote in *Barron's* an interesting account of a similar experiment initiated in the Canadian province of Manitoba early in 1932. The experiment was in the form of a law specifically designating milk as a "public utility" subject to the general provincial regulatory laws for other public utilities under the supervision of the public utility board of the province. Mr. W. R. Cottingham, K. C., chairman of that commission stated:

"I frankly admit that I have always had some difficulty in seeing just where the marketing of milk came into the public utility concept, unless it, as a public necessity, imports so much of public interest that public supervision on economic lines is justified, and it is only by the successful working out of our jurisdiction in these few months that I have been won around to see it as a possible development.

"In the end, public utility control is planned economy to enable the consumer to get his service or product at the lowest possible price, and for that reason the fixing of rates, which the public sees as the chief work of a public utility commission, is but incidental and secondary: the real task is to see that the total investment is not unduly great, that the accounts are properly kept, that plant and equipment are adequately maintained to render the service without impairment in quantity or quality, and that the managerial functions are properly performed. In this task, at least, I can see a public utility control of the marketing of fluid milk."

Mr. Boyle tells of the principal problem with which the Manitoba utilities commission had to deal:

"The real economic issue was that of unfair competition. It is the age-old economic problem which has not yet been successfully settled in any country in the world. In this particular case the six principal milk distributors in Winnipeg were working together, making major deliveries of milk, and obeying the standard canons of commercial competition. In Winnipeg it is estimated that the cost of operating a milk wagon is $7.50 per day, and it makes delivery of 250 quarts so that the doorstep delivery of milk costs 3 cents a quart.

"One large chain store, however, entered

the picture, selling milk on the cash-and-carry basis, and hence at a much lower cost. In fact, it had the 3-cent margin in its favor. To entice customers to the local units of this store, milk was used as an advertising leader. In effect, therefore, this one irregular distributor, handling 2.7 per cent of the city milk supply, was able to beat down prices to both consumer and producer, and to play havoc with the ordinary rules of fair competition. Yet this one store was totally unable to furnish milk to the bulk of the city consumers. This nettle of 'unfair competition' was grasped boldly by the board. The board fixed consumers' prices and distributors' prices so that there would be no more milk-price wars, no price-cutting, and a margin in favor of the cash-and-carry store of only 2 cents. That is, where the householder paid 10 cents a quart for milk delivered in bottles at his home, he would pay eight cents at the store. Milk can no longer be sold by the chain store as a 'leader' at a 'bargain price.' This rule has not hurt the chain store, and has helped the other milk interests."

But the control of price is futile without the control of production. The Manitoba board recognized this and adopted three regulatory devices to that end. First, distributors were controlled, each having its quota of monthly receipts policed by rigid inspection. Quotas are fixed by the commission. This is the first check on the farmer. Check number two comes in the form of the commission's control over the number of pasteurization plants. Check number three is sanitation inspections. New dairy farmers, whose services are not needed in their proposed field of operation, would find great difficulty in obtaining authority to operate.

The whole regulatory business, Mr. Boyle tells us, is handled by a staff of three persons (one stenographer and two inspectors); the annual cost is less than $8,000 a year and is defrayed by a tax on distributors of one cent per hundredweight of milk..

The experiment has so far won favor. Originally enacted for one year, the Manitoban law was extended for another year. The neighboring province of Saskatchewan will likely follow suit, and the city of Regina is considering similar municipal regulation. Chairman Cottingham, however, is modest and guarded in his appraisal of the result:

"We have been very fortunate in our venture. The geographical and artificial boundaries of the milk shed have helped; we were faced with a prospective shortage rather than, as in other cities, a persistent surplus; the coöperation of all concerned has been invaluable, so much so that our powers to license were not required to be exercised; the men we were able to put to work as inspectors are men drawn from the industry, experienced in its ways, and respected by its personnel; the time was opportune, the producers' and distributors' representatives conciliatory; the board regulates in another department the operation of milk trucks, and, all in all, I am disposed to doubt whether our experience could easily be duplicated elsewhere. I say this honestly to prevent too hasty attempts to adopt, what after all, has been so far a very briefly tried experiment."

Be that as it may, four of our own states, Wisconsin, New Jersey, Ohio, and Connecticut, have recently enacted similar laws while a dozen other states are considering them. Now Secretary Wallace's statement makes the whole business look as if Little Boy Blue will soon be made a full-fledged member in good standing in the Public Utilities Club. He is welcome enough, perhaps, but he had better throw away his horn. Utilities have gotten in trouble before for blowing their horn.

—F. X. W.

WHERE IS THIS ROAD'S END? Editorial. *Newark Evening News.* September 5, 1933.

SPEECH by Secretary Wallace before the State Fair; Syracuse, September 5, 1933.

COWS IN UTILITY FIELD. Editorial. *The Wall Street Journal.* September 7, 1933.

MILK—A PUBLIC UTILITY? By James E. Boyle. *Barron's.* September 4, 1933.

"EITHER public opinion . . . must change its point of view of the utility as a public enemy, or the privately owned utility must pass out of existence."

—THOMAS F. WOODLOCK

A National Survey of Commission Attitudes on Utility NRA Codes

A COPYRIGHTED article published in *The Wall Street Journal* of September 7th contained an interesting symposium of statements by the various state commissions as to the possible effect of the NRA code requirements upon utility rates. As could be anticipated from a nation-wide survey attempt by the letter-questionnaire method, all of the commission replies were rather general and noncommittal, taking the attitude, which could be properly expected from any judicial or *quasi* judicial body, that they did not care to pass upon issues without hearing or evidence or to issue statements upon a moot question that would prejudice or disqualify their judgment if they should later be called upon to decide issues actually and properly raised before them (which will almost certainly be the case with very many of these commissions). It was no surprise, therefore, that many of the replies were perfunctory and some states, from which a real declaration of policy would be received with the greatest interest, did not reply at all.

These missing commissions were as follows: District of Columbia, Florida, Georgia, Kansas, Louisiana, Minnesota, New York, North Dakota, Rhode Island, Vermont, Virginia, and Wisconsin. California and Massachusetts replied but refused to answer on ground that such prejudgment would be improper. Likewise, Indiana, Maine, and New Mexico refused to answer the general question categorically preferring to deal with the issue "when and if" it arises before them.

Iowa, Ohio, and South Dakota declined to answer the question on grounds of their jurisdictional limitations over the subject matter. Alabama, Connecticut, Illinois, Kentucky, Nebraska, New Jersey, Tennessee, West Virginia, and Wyoming replied with general statements to the effect that each case would be decided on its own merits with due consideration to all of the proper factors it involved.

Thus we see that the survey brought forth practically no results from thirty of the commissions. Of the balance, whose replies gave any real evidence of what policy these respective commissions will follow, only four, Arizona, Arkansas, Utah, and Washington, definitely indicated that no evidence of increased NRA costs would prevail to gain rate increases.

Arizona felt that it was the intention of the NRA that the utilities should absorb all the increased costs. Arkansas pointed out the failure of utilities to cut rates during the depression as a reason for denying increases now. Chairman Corfman, of Utah, said that if NRA costs result in reducing utility earnings below the fair return level, he would "not feel compelled to grant increases because of the necessity of meeting a national economic emergency." Washington said utilities must look to improved business rather than rate increases for their future return.

THE following eight commissions indicated that they would receive proper evidence of increased NRA costs in future rate cases and that any legally justifiable increases that might be proved necessary to insure a reasonable return on the utility's investment would receive fair consideration: Colorado, Michigan, Mississippi, Montana, Nevada, New Hampshire, North Carolina, and Texas. The commissions of Illinois, Pennsylvania, and South Carolina simply stated that they would receive and give due consideration to evidence of increased utility expenses resulting from conformity with the NRA requirements.

The replies from Idaho, Maryland, Missouri, Oklahoma, and Oregon, while not definitely nor unconditionally answering the question, contain statements meriting individual description. Idaho stated that ordinary procedure will be followed but that the commission

thought it unwise and unpatriotic for utilities to sign the NRA codes only on the condition that they may pass the expense on to the consumers. The Maryland commission (whose chairman, Harold E. West, had already taken a very positive stand on the subject already reviewed in these pages) stated that it will distinguish between whether the added costs are needed to give service or merely to assist the reëmployment campaign. The commission failed to see why utility consumers should be burdened with the expense of benefiting a few newly reëmployed workers whose services could otherwise be dispensed with.

Chairman J. C. Collet, of Missouri, stated that

> ". . . if earnings should be reduced substantially below the point of reasonable return by reason of increased costs chargeable against code practices . . . the commission will investigate and make such order as facts justify, but any increase that may be allowed will be in the form of surcharge expressly designated as being due to NRA code practice."

Oklahoma stated that its laws guarantee to every person a square deal and prohibit confiscation, but that the proper basis for utility returns should give considerable leeway for absorption of NRA costs and probably further reductions in rates as well.

Charles M. Thomas, Oregon's one-man commission, gave possibly the most interesting reply of all. He declared that regulation there is "nonexistent" but that every effort is being bent to establish rate bases. He concluded, however, that "if regulation were in force and an application for increase were made and facts before the commissioner justified the application, he would have no hesitancy in following the law and granting the increase."

THE poll brings, therefore, little substantial evidence of any definite policy and probably none will be forthcoming until the state commissions meeting in person at their annual convention on October 9th in Cincinnati, and very likely not even then. If *The Wall Street Journal* had devised some means of assuring the commissions that their replies would be kept in absolute confidence, the results might have been more enlightening. That is apparently one explanation for the success of the polls taken by the *Literary Digest*. After all, the utility rate situation being what it is today all over the country, one can hardly blame state officials for not sticking their heads into possible political nooses, without any necessity whatever for their doing so.

—F. X. W.

SURVEY OF STATE UTILITIES COMMISSIONS. *The Wall Street Journal*. September 7, 1933.

Salary Control: A New High Mark in Utility Regulation

THERE seems to be springing into existence here in America a new school of Socialism. The socialistic concept has had many variations since Karl Marx penned his original thesis. These have ranged from complete collective control and ownership of all property, both real and personal, such as was attempted by the communistic party in Soviet Russia prior to the capitalistic modifications of Stalin, to the partial control plan practiced in pre-Hitler Germany, whereby the state or municipality purchased blocks of voting stock and thus secured directorate representation in the private industrial corporations themselves—a method employed chiefly in the case of public utility corporations or other "key industries."

But the new school of social control in America is not merely a new variation of the old theme, but rather a fundamental change of program. In-

telligent leaders of this movement have realized that complete governmental ownership of industry is somehow repugnant to the traditions of our population. It might ultimately be accomplished, they argue, but only over a long and tedious campaign to root out the average American's inherent desire to call his own home his castle and to run his own business for better or worse. During the process of this campaign, they feel, America might at any time turn to Fascism as an alternative, which would give the program of social control a lasting setback.

They discovered, however, that the American will submit to all sorts of regulations and governmental supervision as long as he holds bare legal title. Why not, then, let him keep it? Instead of public ownership with private management, why not preserve private ownership with public management?

THE recent agitation for the regulation of utility salaries is regarded by some writers as an example of this trend of thought. The most tangible instance to date appears to be the recommendation of Federal Coördinator Eastman that the railroad companies place a top limit of $50,000 upon the salaries of their officials. This is a direct result, of course, of revelations in Congress of such salaries ranging up to $150,000 a year. From last reports the railroads seem to have agreed to a compromise top figure of $60,000, with most companies conforming to the original suggestion.

All along the line, it appears under the New Deal, property rights will have to become increasingly subordinate to the rights of humanity. Security owners of utilities, for example, will have to be content with less return in order to extend relief through lower rates to financially hard-pressed consumers, and now we see that even management may have to sacrifice not only its powers of control, but perhaps its own terms of compensation to the patronizing supervision of the government. The *Indianapolis News* so interprets the move of Mr. Eastman. It editorially stated:

> "The salary scales were lifted in the period after the roads were returned to their owners, and were influenced by the general era of prosperity. Much of the work of the officials related to financing, and the roads found that in order to interest leaders able to command investment and the confidence of business generally, they were obliged to pay high salaries. It is not contended that the salaries in many instances were not earned. But following the 1929 decline, and into the period when the roads asked for government help, the work of the executives was changed. As the Coördinator said, 'the effect was to engender public distrust and lower the prestige of the positions.'
>
> "The move will be interpreted as another step in the practical government guardianship of the roads. Today they are so closely regulated that the government is responsible to the people for them. With development of the administration merger plan, and the virtual subsidization of weak but necessary roads, the executives will tend more to become agents of the government, but with a private responsibility to investors."

IT is not entirely new—this supervision of salaries. In the September 28th issue of PUBLIC UTILITIES FORTNIGHTLY, for example, was reported the enactment of a German law under the Hitler régime to restrict salaries of all private industries receiving financial aid from the government to a level of that earned by a cabinet officer—which amounts to less than $9,000 a year. Herr Hitler himself was quoted as saying that about $300 a month was "enough for any man."

This brings up an interesting point. Granted that the salaries of public utility officials should or will be curbed, how should they be measured? Should they be restricted, as in Germany, by the amount earned by high government officials?

The *Traffic World*, commenting on the Eastman recommendation, disagreed as to the soundness of such a criterion. First of all, it was pointed out that many wealthy men serve in the government for honor, prestige, a sense of public duty, or to ride a "hobby." Since these men could earn more in private business but prefer the lesser monetary

rewards of public service, it cannot be said that their official salaries are the true measure of the worth of their services. And if they are not the true measure of the worth of official salaries, *a fortiori*, they should not be the measure of worth of private industrial salaries. The *Traffic World* continues:

> "'Luck' figures somewhat in the equation also, some persons in public as in private life being where they are merely through force of circumstances. But, by and large, public servants occupy the positions they hold because they have sought them as desirable from a pecuniary point of view, salary and perquisites both being taken into consideration. Their compensation is a measure of their ability in the sense that they think they can make more money in public office than they could make elsewhere. In many cases they are not even worth what they get. The holders of elective offices are not chosen in the sense that they are drafted because of peculiar ability to do the work; they announce themselves as candidates and procure their own election by means known to politicians; their chief ability is along the lines of political craft, which enables them to become the 'choice of the people.' This applies from the lowest to the highest offices; anyone who does not know it simply is not familiar with practical things.
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> "How foolish, then, to talk about salaries in private business being too high because they are higher than the salaries of public servants 'doing important work.' The work they are supposed to do may be important, but often they do not do it and oftener still they do not do it well. They, for the most part, get all they are worth, if not more. That they seek the jobs is proof that they believe this themselves. There is nothing sillier, generally speaking, than the man who thinks that, if he devoted his talents to private business and the getting of money, he would outshine the giants in the business world. The reason (with, of course, some exceptions) he is where he is is that that is where he belongs; if he could take the place of the high-salaried business executive he would do so. It is especially humorous for the professional politician who has achieved a position in the legislature or the United States Senate to think the salary of the business executive should be pared because he gets more than a Senator or a governor. How many 'lame duck' Senators and Congressmen, seeking other outlets for their talents after the people have refused to reëlect them, are sought by big business or any other kind of business for positions of importance?"

ALL this, of course, is quite aside from the question of whether all railroad executives are getting salaries that are too large now, during hard times, or at other times. It probably disposes, however, of the matter of comparing private salaries with public salaries.

In New York state there has been similar criticism of the salaries of gas and electric utility executives. It may be that this movement for commission control of utility officials' salaries is the next step in the program of governmental responsibility for utility management. Of course, most commissions already have rather broad and general power to veto, as operating expenses at least, officials' salaries that are found to be "unreasonably excessive." This power, however, is not frequently exercised and then only in cases of manifest abuse resulting in impaired service, and after evidence indicating that the salaries in question have already been paid. Such is the objection raised by Jerome Count, New York attorney, in a bitter attack on New York utilities, and the commission's policies as well:

> "While bankers, stockholders, and officials fattened on the spoils of this monopoly, rank-and-file employees were rewarded only with wage cuts and loss of jobs. Some 8,000 New York utility employees have been laid off and the companies under investigation have effected wage cuts that will net them approximately $5,000,000 in labor savings during the year. It is known that many employees have received wage cuts as high as 50 per cent through the device of transfer from one department to another. Regulation, as administered by the commission, however, can find no principle under which these matters can be controlled unless the consumers' service has actually broken down by means of such policies. The commission deliberately rules, in effect, that it will not lock the barn until after the horse is out."

—F. X. W.

EDITORIAL. *Indianapolis News*. August 28, 1933.

SALARIES, PUBLIC AND PRIVATE. Editorial. *Traffic World*. August 29, 1933.

THE UTILITY CRISIS IN NEW YORK. By Jerome Count. *The Nation*. August 23, 1933.

The Wings of the Blue Eagle over the Railroads

APPLICATION of the basic principle of the NRA to the railroad industry, despite the interpretation that the carriers are exempt from its specific requirements, was the admitted purpose of a letter addressed to all roads by Federal Coördinator Eastman urging the spreading of railroad employment and the expansion of maintenance work. Utility officials as well as state utility commissions were doubtless interested in the sharp rap over the knuckles which the administration administered to the railroad labor unions (for their indirect attempt to put over the 6-hour day) by rejecting the promulgation of a railroad code.

Mr. Eastman, however, takes care that the action of the administration as well as his own suggestions shall not be interpreted as the endorsement of any particular length of work day or work week. His work-spreading suggestion, he explains, is simply to achieve general curtailment of long hours where feasible.

Mr. Eastman's legal justification as to the exemption of the railroads from formal NRA regulation may presage a similar ruling for other utilities. He points out that railroads are already under far more extensive regulation than the recovery act could possibly attain. This is probably true of most other utilities operating in states where commission regulation has been effectively established.

Another angle of the NRA developments is equally interesting and may be of vital concern to the railroads. That is the interstate bus code. For years, without success, Congress as well as the state commissions has been trying to put through the enactment of a law to regulate these bus carriers who operate beyond the jurisdiction of the state commissions, often with much detrimental effect on their railroad competitors. Comes now the NRA and, as was true of the cotton textile code, which, at one full swoop, abolished child labor, appears likely to succeed in placing all passenger busses under some form of Federal regulation by and with the consent of such operators themselves.

Federal supervision appears to be a sacrifice or a price which the "good" operators are glad to pay in consideration for securing the coöperation of the recalcitrant one tenth (or whatever fraction it may be) of their membership. They see in the code an opportunity to be rid of the cut-throat competition which had dogged the industry practically since its birth and it is still a comparative infant, although perhaps a lusty, howling one. Mr. W. W. Jermane, writing in the *Seattle Daily Times,* describes the pertinent provisions of the code:

> "In their code the National Association of Motor Bus Operators has recommended the licensing of bus lines, compulsory insurance to cover passengers, and the establishment of uniform rate schedules between principal cities. Officials of the association say the code agreement will bring about a stabilization of operation which only the NRA could have made possible. They will be able to control their unruly 10 per cent just as has been true in the cotton textile industry."

Mr. Jermane concludes with the prediction that even though the NRA laws go out of existence at the end of their 2-year term, Congress will have material enough ready and the groundwork already laid for effective permanent regulation. There are many, however, who believe that Congress will not wait, but will enact a new and general transportation regulatory law at the next session which will bring the interstate busses under the complete regulatory control of a board—probably the Interstate Commerce Commission—which will coördinate the regulation of all interstate carriers whether on rail or rubber, or land or sea or air.

—M. M.

BUS OPERATORS NOW WELCOMING U. S. REGULATION. By W. W. Jermane. *Seattle Daily Times.* September 11, 1933.

The March of Events

The Muscle Shoals Yardstick

More than $56,000,000 has been assigned for use in the Tennessee river basin by agencies of the Federal government in addition to the $50,000,000 allotted to the Tennessee Valley Authority, according to a news item published in the *Electrical World* of September 16th. During the previous week David E. Lilienthal, member of the board of directors of the Tennessee Valley Authority, announced the board's tentative rate policy. According to Commissioner Lilienthal, any municipality in the area to be served by the Muscle Shoals plant, which owns its own distribution system, may secure wholesale power from the Authority at the average cost to it of 7 mills a kilowatt hour. The Authority proposed also that municipal wholesale customers charge the individual residence consumer in the towns and cities thus served a maximum gross rate of 3 cents a kilowatt hour for the first block and for subsequent blocks 2 cents, 1 cent, and 4 mills, respectively. For the typical general consumer, Commissioner Lilienthal intimated that it would average about 2 cents a kilowatt hour, and for the typical limited user an average of about 2½ cents per kilowatt hour. For a fully electrified home, which was said to be the ultimate objective of the Authority, the rate would average 7 mills per kilowatt hour.

It was also proposed that the farm user should pay the same rate for energy as the town and city householder. These schedules, both for town and farm, carry with them a requirement that the customer use a reasonable amount per month as a minimum.

Commissioner Lilienthal stated that these wholesale rates have been computed on a conservative basis to cover all the costs of furnishing the service, including operation, maintenance, depreciation, and taxes. In addition to these costs, he declared that the board had made provision for interest and retirement, although such provision is not required by the Tennessee Valley Authority Act. In this manner the board proposes that the power project will be strictly self-supporting and self-liquidating.

On September 16th, Charles S. Reed, consulting engineer and rate expert of New York, issued a statement, in answer to that issued by Commissioner Lilienthal, questioning the soundness of the announced rate policy of the Authority. As to the proposed wholesale rate of 7 mills per kilowatt hour, Mr. Reed was of the opinion that it was neither "revolutionary nor startling." He said that even in New York where fuel generation is a necessity, the cost of production at the switchboard is considerably less than a cent and that large municipal plants which have been in operation for years, such as Los Angeles and Seattle, have production cost within a mill or so of the 7 mills figure used by Commissioner Lilienthal. And yet, notwithstanding the fact that these municipalities have no taxes to pay, Mr. Reed pointed out that they find it necessary to charge much higher rates than those which Commissioner Lilienthal suggested for the sale to the ultimate consumer by the municipal plants in the Tennessee Valley Authority district.

"It would be well to note that Mr. Lilienthal's jurisdiction stops with the 7-mill rate which is not better than is already available in that territory," and he "passes the buck" to the municipal plants to sell at rates which he designs for them claiming the credit in advance for something he will have no part in accomplishing, because, as a matter of fact, few of the municipalities in the T. V. A. territory are today paying much more than 7 mills for similar service. "He is putting the municipal plants of the south 'on the spot' for the savings he is offering in the cost of current are but a drop in the bucket compared to their loss in revenue on the rates he figures for them. Few of them will be able to survive on his rates, even if they pay no taxes." Mr. Reed also claimed that Mr. Lilienthal's claim that his figures included the equivalent of taxes was misleading since it included only taxes on the production system and overlooked entirely taxes to be paid on the distribution system which constitute the bulk of utility taxes.

Public Ownership Conference Called

Distinguished leaders of the major political parties, eminent engineers and educators, were to address the convention of The Public Ownership League, to be held in Chicago September 28th to October 1st, inclusive. On the program were many of the progressive leaders of thought and action in the social recovery and construction movement which is now recasting the economic structure of the United States. Among the Federal government officials on the program were Senator C. C. Dill, of Washington, Congressman William Lemke, of North Dakota, and Chairman Arthur E. Morgan, of the Tennessee Valley Authority.

State and city officials included Attorney

General C. A. Sorensen, of Nebraska, Mayor William Mahoney, of St. Paul, Minn., Mayor Daniel W. Hoan, of Milwaukee, Wis., Mayor McCarty, of Washington, Ind. The engineers present included J. D. Ross, of Seattle; R. E. McDonnell, of Kansas City; E. F. Scattergood, of Los Angeles; Llewellyn Evans, of Tacoma; Henry A. Mentz, of Louisville, and Major L. D. Cornish, of Illinois. Well-known writers and journalists included Charles Edward Russell, of New York and Washington; Louis Bartlett, former mayor of Berkeley, Cal.; Clark McAdams of the St. Louis *Post Dispatch*, and Newton Jenkins, of Illinois.

In addition to the speakers there were to be displays and exhibits by the municipal plants of Los Angeles, Seattle, Tacoma, and Jacksonville.

Utility Sues Magazine on Libel Charge

THE Associated Gas and Electric Company announced on September 9th that a suit for libel had been instituted against *"The Atlantic Monthly."* The company's formal statement announced the suit "as a step in its campaign to protect the interests of its more than a quarter of a million security holders throughout the world against published attacks which have been made from time to time by sensation seekers." The article in question was a study of the Associated system by N. R. Danielian, an instructor in economics at Harvard University.

The article held in general that the company's growth, its methods of financing, its policies so far as investors were concerned, and its management tended to curb efficiency and to increase the burden of ratepayers. The company plan of capital rearrangement was criticized, as were many other things about the system.

Municipal Utilities and the Blue Eagle

THE NRA ruling handed down during August, that municipal governments are not affected (except voluntarily) by codes of maximum hours and minimum wages, has since been modified as to "municipally owned public utilities." In reply to an inquiry as to types of utilities thus affected, the National Recovery Administration wrote to *The American City* under date of August 28, 1933, as follows:

"The term 'municipally owned public utilities' is restricted to utilities for which charges are made by methods of other than taxes. A sewerage system, for example, while termed 'public utility,' is a system that is operated and maintained through a tax system, as a rule, and in some cases on a rental basis in addition to taxes levied. Such a system would not be included in the above interpretation; however, if a state or municipality operating a public utility (whether publicly or privately owned) wants to sign the President's Reëmployment Agreement and get the Blue Eagle, it must comply with its provisions."

Alabama

Drastic Slash in Power Income Claimed

DECLARING that his company is faced with a loss in revenue of $825,000 annually through recent rate reductions ordered by the Alabama Public Service Commission, as well as additional expenses, Thomas W. Martin, president of the Alabama Power Company, said in a statement September 6th that his company would be forced to seek some readjustment unless increased business made up the losses contemplated. Mr. Martin said the material reductions for residential and cotton gin rates ordered by the commission substantially affects the income of the Alabama Power Company, with a loss of revenue estimated at $414,000. In addition he claimed that the company is confronted with $144,000 immediate expense required to absorb the 3 per cent Federal tax paid prior to September 1st by the consumers. To this burden on the company must be added, he claimed, $176,000 to comply with the government's NRA program, and $91,000 for the emergency Federal capital stock tax.

Mr. Martin said he was unable to estimate at the time payments under the state's income tax law. He pointed out that the Alabama Power Company will this year be required to contribute over $2,100,000 in the form of taxes for maintaining municipal, county, state, and Federal governmental institutions.

California

Utility Seeks Review of Public Works Project Loan

THE Pacific Gas & Electric Company has sought and has been granted permission to appear before the regional public works adviser in all applications from its territory involving loans for public power projects, according to the *Electrical World* of September 16th. In a letter to the regional adviser, the California advisory committee and the district advisory engineer, P. M. Downing, vice president and general manager of the company, pointed out the interest the utility had in projects which might involve its purchase of energy to be generated or which might compete with it in its present markets.

Mr. Downing declared that there has been a great decrease in the use of power in California owing to the depression, and that nearly one fourth of the productive capacity of the power plants in the state is now idle. It was pointed out that by 1935 power for southern California would be available from Boulder Dam and that by 1938, 4,300,000,000 kilowatt hours of firm power and 1,300,000,000 kilowatt hours of secondary power from Boulder Dam would be thrown on the southern California market. Power from plants in the San Joaquin valley, which now supply the southern part of the state, would be diverted to the central and northern market in competition with present supplies.

San Francisco to Vote on Distribution Plan

IN the next November election San Francisco voters will be given the opportunity of approving plans recommended by the board of supervisors for the disposal of energy to be generated at the proposed Red Mountain Bar plant. The project includes the construction of a transmission line to the city and the building and operation of a distribution system. Previously, the majority of the board had recommended that there be placed on the ballot an alternative proposal to sell the output of the plant to the Pacific Gas & Electric Company. As a result of activity of municipal ownership advocates, however, the majority of the board subsequently voted to rescind its previous action so that the voters at the November election will have only the option of approving or rejecting the board's recommendation for municipal distribution.

Colorado

Standby Plant Serves in Flood Emergency

BUT for the fact that the Public Service Company had kept its old manufactured gas plant in readiness, Denver would have been without gas for two days instead of only seven hours, as the result of a week-end flood on September 9th. The flood caused a break in the High Line canal on that date and washed out part of the Colorado Interstate Gas Company's pipe line which supplies the Public Service Company with natural gas. The break was not repaired and the line was not put back into service until late in the night of September 11th. All during the preceding Sunday and until 4 o'clock Monday afternoon, Denver consumers were served with manufactured gas from the company's standby plant. Company officials say that the "unprecedented demand" for gas, which they attributed to the cooler weather, overtaxed the capacity of their plant and made it necessary for them to turn off most of the mains at 4 o'clock Monday afternoon.

Incidentally, preparation of an ordinance reducing the rate on the first thousand cubic feet of gas used monthly from $1.80 to $1.25 was begun by Assistant City Attorney Frederick P. Cranston, to be applicable to the Denver consumers of the Public Service Company. The ordinance was expected to be ready for filing with the city council during the middle of September. Passage of the ordinance was expected to precipitate a legal battle, according to a news item published in the Denver *Post*.

District of Columbia

Street Car Merger Plans Near Completion

THE plans for the merger of Washington's two competitive street car companies were to be approved by the District of Columbia Public Utilities Commission at its regular meeting on September 21st and were scheduled for submission to stockholders of the Capital Traction Company and the Washington Railway & Electric Company for ratification on September 26th, according to a news item in the Washington *Daily News*.

From the beginning of the merger activities in 1926, the issue has been complicated. The public hearing on the final agreement, held on September 18th did not change the complicated nature of the problem. Chairman Patrick, of the commission, asked John H. Hanna, president of the Capital Traction, after the latter had read the agreement, to compare the financial set-up of the proposed Capital Transit Company, with the combined set-up of the two companies. Mr. Hanna's testimony indicated that the capital structure of the Washington street car systems would be reduced by the merger from $49,000,000 to $38,000,000, as represented by outstanding stocks and bonds. Complications arose in determining the cost of current to be charged against the combined street car systems by the Potomac Electric Power Company which is now a subsidiary of the Washington Railway & Electric Company.

Florida

Miami to Seek Utility Rate Cut

CITY commissioners were scheduled to hold a conference about September 15th to consider the advisability of lopping off an additional 14½ per cent from electric power and light rates, according to an announcement by Mayor E. G. Sewell in the Miami *Daily News*. The city passed an ordinance effective March 23rd reducing rates approximately 33 per cent. Since that time an engineering report and appraisal have been furnished the city, according to Mayor Sewell, indicating that a cut of 47½ per cent would be justified.

The conference was to be held with C. F. Lambert, electrical expert of the Burns & McDonnell Engineering Company, of Kansas City, which prepared the data. If a new ordinance is passed making a further proposed reduction, the city will withdraw its first ordinance, now in the process of litigation. The Florida Power & Light Company, which obtained an injunction, is depositing $50,000 a month security bonds in the U. S. court pending the outcome of the litigation.

A proposal to reduce gas rates 22.6 per cent also was to be considered.

Georgia

Commission Ousters Appealed to Higher Court

JUDGE Edgar E. Pomeroy in Fulton Superior Court on September 12th signed bills of exceptions carrying the appeals for former Chairman James A. Perry and former Commissioner Albert J. Woodruff of the Georgia Public Service Commission to the state supreme court. The action of the court sends to the supreme court the petitions of Mr. Perry and Mr. Woodruff for review by the courts of Governor Talmadge's ouster order. Judge Pomeroy refused to review the case himself.

It was also expected that the high court will pass on the cases through the *quo warranto* proceedings in which all five members of the old commission have been defeated in the lower courts.

Phone Companies Plead Poverty at Hearing

CURTAILMENT of the operating cost of the the Southern Bell Telephone Company in Georgia has failed by $918,176 to meet the reduction in revenue during the past three years, the public service commission of Georgia was told on September 15th in the answer of that

telephone company to the order for a hearing on rate revision. The assertion was made before the public service commission by T. B. Baird, Georgia manager of the Southern Bell Telephone Company who read a prepared statement as the company's first witness.

Operating costs of the company in the state have been reduced by $800,359 since 1929, he said, but revenue during that period decreased $1,718,535. The company's return on its property in the state in 1932 amounted to 6.06 per cent and for 1933 amounted to 5.57 per cent for the first five months, continued Mr. Baird, who further alleged that the valuation placed on the company's property on which such percentages were based was a bare minimum representing the actual value of such property.

Previously the commission heard the dilemma of small telephone companies who professed to be facing bankruptcy if rates were lowered. W. E. Gilson, general manager of the Central and the Southeastern Telephone companies, operating small exchanges in South Georgia detailed the financial condition of his companies, showing a drop of nearly 100 per cent in revenues during three years. He pointed out that to increase rates would mean a loss of business that would bankrupt the utilities, whereas a reduction would mean, as a source of new business, only former subscribers, who already owe the company from $30 to $50 which they could not pay.

Illinois

Chicago to Seek Single Transit Fare

MAYOR Edward J. Kelly and Chairman James B. Bowler, of the city council committee on local transportation, joined on September 17th in a statement announcing the opening of a determined effort to bring about a single transit fare for the city of Chicago. They demanded immediate action to deliver to the city the benefits promised by the transit settlement ordinance of 1930 which was adopted by a vote of the people, but which has never been accepted by the companies. As a start they insisted that no further time be lost in establishing the exchange of transfers between the surface and elevated lines. Toward this goal, they said, the city would press with all the force at its command, following up with action for the extension of lines and other improvements.

Experts Refute Charge of Wasted Gas

THE Illinois Commerce Commission was informed on September 15th by a government expert, called as an unbiased witness by the commission, that charges that the people of Chicago paid $11,000,000 in two years for wasted gas were untrue. Another government representative present at the hearing said his instructions to attend the hearing came from President Roosevelt.

The commission was on its third day of investigation of alleged waste of gas due to faulty adjustments of cooking ranges after the Peoples Gas Light and Coke Company began to distribute a mixture of manufactured and natural gas instead of the manufactured gas previously sold by the company.

Robert B. Harper, vice president of the gas company, in charge of research and testing, was on the witness stand before the commission at the beginning of the hearing. His testimony was to the effect that 30 per cent efficiency in gas stoves is the average throughout the country for gas in water boiling tests, due to the fact that 70 per cent of the heat generated from the burning gas escapes around the sides of the vessel.

Chairman Benjamin F. Lindheimer then announced that the commission had attempted to secure the person of widest experience and highest standing to give expert testimony on the point, and Elmer R. Weaver, a government expert from Washington, was sworn and placed on the stand. Mr. Weaver's testimony supported that given by Mr. Harper regarding the average efficiency of gas ranges. He was asked his opinion as to the efficiency of the gas appliances in use in Chicago, burning the mixed gas which has a heating value of 830 B.T.U., as compared to the efficiency of the burners when only manufactured gas of 530 B.T.U. was furnished to the public. He replied that the two types were so nearly of the same efficiency that there was no substantial evidence as to whether they may have changed slightly in one direction or the other. He added that his opinion was not changed by the reading of a consulting engineer's report on which the charge of waste was predicated.

Judson C. Dickerman, engineer-examiner for the Federal Trade Commission at Washington, was also present throughout the hearing.

Maryland

Commission Refuses Permit to Conditional Cab Owners

THE public service commission on September 8th declined to issue permits to the operators of taxicabs who have acquired equipment under certain conditional contracts of sale. Harold E. West, chairman of the commission, rendered the decision in a letter to S. Bachman, manager of the General Taxicab Service, Inc., in which the application of the concern for a permit for the operation of a taxicab by one Joel O. Brazzell was refused. Mr. West's letter called attention to an opinion rendered by former United States Senator William Cabell Bruce, who is at present general counsel of the commission. Senator Bruce was of the opinion that attempted operation of taxicabs by persons not owning them, and in which title and ownership were vested under a conditional sales contract in a corporation not authorized to conduct a taxicab business, was an attempt to evade the Maryland statute which makes it unlawful for the owner of any taxicab to enter into any contract with the operator thereof by the terms of which contract the operator pays for the use of such taxicabs.

From results of a news investigation by the Baltimore *Sun* on September 18th, certain taxicab drivers in the city of Baltimore declared that rules laid down by the public service commission calculated to break up the practice of taxicab corporations requiring drivers to pay fixed daily sums for the use of cabs were being violated. One of these rules promulgated by the commission was the requirement of a "daily manifest sheet." The *Sun's* investigation indicated that drivers were still, however, paying the "nut"—a slang expression used by drivers to indicate the stipulated sums which they are required to pay every day to the taxicab corporation selling or renting to them their cabs.

Paul L. Holland, chief engineer of the public service commission, admitted that the rule about the "nut" is being violated but declared that the commission was unable to catch the violators, although it had investigated all complaints and had revoked four or five permits within a month because of such violation. The head of one taxicab company reported that taxicab drivers are "fixing up their daily manifest sheets to suit themselves and most of them are faked."

Michigan

Voluntary Rate Cut Accepted by the State

THE state public utilities commission has conditionally accepted the proposal of the Detroit Edison Company for an $800,000 reduction in its rates. In issuing its order based on the voluntary schedule submitted by the company, the commission wrote a stipulation that the reduction was regarded in partial compliance with a previous order of the commission for a reduction of $1,500,000. The company has denied this position. The commission at the present is restrained by an order of the Ingham Circuit Court from enforcing its $1,500,000 reduction.

In offering its reduced rate, Alex Dow, president of the company, expressly stated that the reduction was not offered pursuant to or in compliance with the commission's order of August 15th. The proposed changes will not raise the rate of any customer and will make substantial reductions (10 per cent and upward) to about 30,000 customers, and will help "less substantially, but measurably, another 20,000 customers," according to the company's statement.

Mississippi

Fifty-two Towns Seek Tennessee Valley Power

INCLUDED in the list of 100 municipalities which have applied to the Tennessee Valley Authority for power, according to David E. Lilienthal, director in charge of the Authority's power program, were 52 places in Mississippi. The balance of the list of 100 municipalities included 36 towns in Tennessee, 16 towns in Alabama, and 5 elsewhere. The Mississippi communities included were as follows: Tupelo, Aberdeen, Amory, Belmont, Booneville, Columbus, Corinth, Fulton, Iuka, Macon, Nettleton, Coffeeville, Houston, Prairie, Starkville, West Point, Baldwyn, Guntown, Saltillo, Rienzi, Verona, Shannon, Sturgis, Longview, Bradley, Caledonia, Smithville, Tremont, Burnsville,

Halcut, Paden, Tishomingo, Dennis, Plantersville, Golden, Kossuth, Mantachie, Dorsey, Mooreville, Ratlift, New Albany, Tibee, Mayhew, Artesia, Crawford, Brookville, Shuqualak, Pontotoc, Canton, Indianola, Cedar Hill, and Ripley.

Missouri

Rates Cut Almost $2,000,000 in Three Months

REDUCTIONS in utility rates since June 1st under new schedules filed or reported to the public service commission will make an annual saving of $1,817,506 to Missouri consumers, Chairman J. C. Collet of the commission announced on September 10th. Collet said most of the reductions have been made voluntarily by the utility companies following conferences with the commission. The major reduction was reported by the Union Electric Light and Power Company of St. Louis, affecting rates in St. Louis and surrounding territory.

Reductions of $1,724,576 were made by electric light and power, gas, and water companies. Telephone reductions totalled $92,930. All sections of the state were affected by the reductions.

The East Missouri Power Company serving nearly 40 communities in northeastern Missouri was recently ordered by the commission to file a new schedule of rates calculated to reduce its return on a valuation fixed by the state public service commission of $750,000 from 7.58 per cent earned in 1932 to 7 per cent.

Montana

Dean of State Commissioners Deceased

WITH an editorial eulogy in its September 12th issue, the Montana *Record-Herald* reported the death on the preceding day of Daniel Boyle, a member of the Montana Railroad Commission until a few months ago. Well known in regulatory circles for his ability and personal charm, the life of Mr. Boyle stands as a romance of the rails. He started his career at the age of thirteen as a water boy on the Erie in New York state and at the age of nineteen he was a section foreman and subsequently held positions of increasing importance until appointed general superintendent on the Northern Pacific. He held that post in the trying times of the great American railway strike, while Coxey's army was marching against Washington and during the days of train robbers and train wreckers. He had a prominent part in bringing about the capture of Gravelle, one of the most feared in the ranks of train bandits. In 1908 Mr. Boyle was elected to the railroad and public service commission and, save for two years, served on that board continuously until failing health compelled his resignation last November.

Nebraska

Two Municipal Plants Receive Setbacks

EARLY September witnessed setbacks for the plans of two Nebraska municipalities to establish their own power and light plants. Cortland on September 15th failed to muster the necessary 60 per cent of votes to carry bonds for a municipal water system, 84 favoring the proposition and 71 opposing it. A week previous Judge Hostetler ruled that the special election held last April in the city of Kearney, at which time acquistion and operation of a municipal light and power plant was approved by a 4-vote majority, was "void and unauthorized." The court found the city had no initiative and referendum ordinance under the provisions of which such an election might be called.

During the same period the city of Ainsworth was called upon to defend the validity of its contract with the Fairbanks-Morse Construction Company for the building of a power plant, as the result of a suit filed by the Interstate Power Company, which operates a plant in that community. The principal contention was that the city is without authority to build such an electric light and power plant and pay the cost with revenue warrants which are payable only out of net profits.

New York

Utilities Queried on NRA Costs

ELECTRIC companies of the Consolidated group were ordered on September 15th by the public service commission to show the actual cost and details of the employment of 250 of the 2,100 additional employees contemplated by the code under which the seven companies are operating.

During examination of Robert B. Grove, vice president of the New York Edison Company, Frank E. Carstarphen, assistant corporation counsel, questioned the methods of the utilities in complying with the NRA. The companies have held at the rehearing that increased costs under the code would make the 6 per cent reduction ordered by the commission unfair.

New York City Utilities Tax Program Protested

AT a hearing before the Board of Aldermen branch of the New York Municipal Assembly early in September, public utilities protested the new temporary tax of 1½ per cent of their gross income, embodied in the proposed city tax program, as unfair. The temporary legislation in which the utility tax is included will extend from September 1, 1933, to February 28, 1934. The measure provides also that the books and records of the companies must be open to the comptroller, who receives also power to hold hearings, subpœna witnesses and books, and to request the corporation counsel to start suit if the companies fail to make payments.

Pennsylvania

Commission Challenges Lower Court Injunction

THE public service commission on September 15th challenged the right of the Dauphin County Court to issue an injunction restraining the commission in a case in which no final order has been issued. John Fox Weiss, chief counsel for the commission, raised the question in the Philadelphia Electric Company rate case, in which the court sometime ago granted a temporary order restraining the commission from proceeding unless the burden of proof is placed upon the complainants. Mr. Weiss' objections were based on the contention that the court has no jurisdiction in commission proceedings until a case is finished and an order written. To hold otherwise, the utility commission argues, would permit protracted delay of commission cases.

Argument was set by Judge William M. Hargest for October 3rd. The date was fixed after Philadelphia City Controller S. Davis Wilson asked the right to intervene in behalf of some thirty Philadelphia, Delaware, and Montgomery county consumers, consisting mostly of physicians and druggists, who protest that under the new rate schedule they are placed on a commercial rating with large increases in their bills.

Washington

State to List High Utility Salaries

A COMPLETE tabulation of all salaries of more than $200 a month paid by Washington state utilities was sought on September 13th by the state department of public works. The information will be used to ascertain reasonableness of rates charged to operating expenses, explained Director E. K. Murray. Particular attention will be given salaries of managers and owners of smaller utilities. If a salary is considered excessive, it will not be allowed in fixing operating expense. However, if controlling officials still wish to pay their executives salaries in excess of those found ample by the department of public works, such charges must be made against dividends.

All utilities were expected to file information with the department showing the name, position, and salaries of all employees in the $200 classification. Holding company fees, bonuses, and payments from intercompany operations were to be included.

The Latest Utility Rulings

Natural Gas Rates Slashed in Texas

THE Texas Railroad Commission on September 13th reduced the gate rate for domestic gas from 40 cents to 32 cents per thousand cubic feet in all cities and towns in Texas served by the Lone Star Gas Company. Based on average consumption, the commission said the reduction would save approximately $1,400,000 a year to customers of the Lone Star system. The order affects approximately 250 cities and towns. Recommendation was made by the commission that the saving be passed on immediately to the consumers. "If this is done," the commission said, "it is believed that to a large extent it will settle a bitter rate controversy that has been going on for years between the company and some of the towns in Central and Northern Texas served by it."

The commission found a rate base of $46,246,617. Revenues for the test year of 1931 were found to be $9,301,862 and expenses $4,174,807. Annual depreciation was found to be $968,066 on a 6 per cent sinking-fund basis. The commission disallowed the management fees of $95,062 paid the Lone Star Gas Corporation, stating that such management fees were a division of profits, and that "a charge of this nature simply would disguise an operating outlay and cause it to appear as an operating expense."

The principal item entering into the rate base was pipe. The commission adopted the actual price being paid by the company as testified to at a hearing by the state's engineer. The commission said that "the fact that the December 31, 1931, quoted prices sought to be maintained by the company for the pipe on the largest line ever built by the company was greater than the prices actually paid during the peak period of 1929." The commission allowed a minimum rate of return of 6 per cent a year on the property of the utility.

The commission's engineers and auditors were nearly a year in the preparation of the case for trial and the trial itself occupied approximately eight months. The hearing was held by Chief Examiner Olin Culberson at Fort Worth. The commission's order was criticized by L. B. Denning, president of the company, who gave notice of appeal to the courts. These probably will be taken to the Federal court, and pending appeal the existing rates will be continued. Mr. Denning said that if the commission's order is carried into effect, it would mean either the confiscation of the company's property or a drastic reduction in the service rendered. Denning claimed that the prices used by the commission's engineer for pipe were based on a shipment of 1,000 feet purchased by the company at a bargain in a distressed market, which was the lowest price in ten years. He said that this single price level was used by the commission's engineer as a basis for placing a valuation on more than 900 miles of large-sized pipe. *Re Lone Star Gas Co.*

Utility Ordered to Furnish Breakdown Service to Private Plant

DIRECT-current breakdown service must be supplied by the New York Edison Company to any present existing user of direct current who applies for it and is willing to observe reasonable rules and regulations of the company,

according to an order issued September 12th by the public service commission. The order was the result of an investigation started by the commission after it had learned that the Edison Company was refusing to provide direct-current "breakdown" service to owners or lessees of buildings who had installed private plants and who relied on the public utility company only for auxiliary or reserve service.

The commission rejected the company's plea that its comprehensive plan for replacing all direct-current supply with alternating current within the next twenty-five years would be impeded if direct-current consumers had to be supplied with that type of service upon application. The company, at hearings before Examiner Melvin L. Krulewitch, declared its willingness to provide an alternating current "breakdown" service upon request. In his opinion, which was approved by the commission, Mr. Krulewitch concluded that the company's refusal to supply direct-current "breakdown" service to existing direct-current customers was "unreasonable." He stated:

> "The record does not directly indicate that the policy of the company in refusing direct-current breakdown service was designed to discourage the installation of private plants, but it does appear that customers who otherwise would have installed private plants have hesitated to do so because of the company's refusal to provide direct-current breakdown service."

The opinion explained the company's program for a comprehensive change-over from direct to alternating current. The company had estimated that the program would cost $100,000,000 over a 25-year period. Mr. Krulewitch found, however, that only about $2,000,000 had been spent to date and that "it was indicated that the company's present plan of change-over will remain indefinite and uncertain as to the locations to which it will be applied, and as to the amount to be expended in any particular time."

The opinion declared that the company could not state now, although its change-over program was started five years ago, when a given location in Manhattan would be changed to alternating current. Mr. Krulewitch pointed out that the supply of direct-current breakdown service involved no new direct-current customers, but only applicants now using direct current and equipment for it. The commission found no merit in the company's contention that it was more expensive to change over a breakdown customer than a standard or firm power customer, even though the kilowatt cost might be higher. *Re New York Edison Co.*

Utility Entitled to Old Rate Pending Review of Rate Cut Order

For the second time since the summer started Justice Gilbert V. Schenck of the New York Supreme Court has halted temporarily the enforcement of rate reduction orders of the New York Public Service Commission. The latest restraining order involved the attempted reduction of rates of the Consolidated Water Company of Utica concerning which the commission handed down an order on June 28th. Justice Schenck's opinion was not a decision on the merits of the commission's order (which has already been brought before the appellate division on certiorari) but concerned an application by the company for a stay of enforcement. The court's opinion stated:

> "It is not for this court to review the order of the public service commission. Such review will properly be brought before the appellate division. In the meantime, however, and pending such review and until the final determination thereon, the company and the consumers should, if possible be protected. Such protection may be given the consumers by a proper bond conditioned for the repayment to such consumers of the difference between the moneys received and collected under the new schedule required to be filed by the order of June 28, 1933, and the present

schedule, with interest, in the event that the appellate division affirms the said decision and order of the commission."

In contrast to the protection that would be afforded to consumers by the filing of the bond by the utility company for the amount of the reduction pending the determination of the appellate proceedings, Justice Schenck pointed out that it would be practicably impossible for the company to recover the amount to which it would be entitled from its consumers if the commission's order were permitted to be placed into effect and should be ultimately vacated by the appellate court.

This case did not involve any speculation as to the amount the company would lose in operating revenue because the commission's order specifically fixed the amount of the reduction to be not less than $120,000. The court found that the company had made out a *prima facie* case which appeared to be all that was necessary for it to obtain a temporary restraining order. Justice Schenck's opinion stated:

"The commission found that a return of 6 per cent was the maximum amount of return which the company should be allowed to earn. It may well be that less than a 6 per cent return is confiscation, but it does not follow that a return in excess thereof is unfair and unreasonable. The company has made a *prima facie* case. The action of the commission will be reviewed by the proper tribunal. In the meantime, unless a stay is granted, it is apparent that irreparable damage will result in the event that the appellate division reverses the commission's determination."

Consolidated Water Co. of Utica v. Maltbie et al.

Telephone Utility Penalized for Unnecessary Plant Construction

IT is rather interesting in these days of attempted economic recovery when the government leaders everywhere are pleading with business men in general, as well as with the consuming public, to buy and build as much as possible, to hear that a state commission has penalized a utility for making what the commission regarded as unnecessary expenditures for plant construction and improvements which resulted in increased capital and operating costs. The penalty came in the form of an order directing the Tri-State Telephone & Telegraph Company to reduce its rural switching rate per station from 50 cents to 35 cents a month.

The case arose upon a complaint filed with the Minnesota commission by a rural telephone company using the switching service of the Tri-State Telephone & Telegraph Company against the 50-cent rate. The petitioner contended that the rates should be cut in half. There was no contention made apparently that the defendant utility was earning under the prevailing rate an excessive rate of return, as based upon the value of its investment in the facilities used. The principal contention of the petitioner seemed to be that the defendant company had made a number of unnecessary improvements and extensions which had not appreciably increased the value of the service to its switching subscribers, as compared with the quality of service previously rendered, but had resulted in unnecessarily high rates. The commission viewed this argument with favor and in its opinion it expressly found:

"That the capital investment of the company in its plant at Owatonna on January 1, 1931, was $179,776. On December 31, 1931, it was $201,812. On December 31, 1932, it was $319,232, being an increase of 77.57 per cent in that 2-year period; that this increase of investment did not in any way increase the value of the service rendered by the company to the rural companies or to the subscribers on their lines, and the increase of capital investment as found above followed the filing of a petition by citizens of Owatonna with this commission for an investigation of the exchange rates and charges being made for local service at the Owatonna exchange. Before the investigation based on said petition could be completed or brought before this com-

mission, the company began the rebuilding program mentioned, which was completed in October, 1932, resulting in the increase of the company's capital investment as above stated, and that the making of said replacements, additions, changes, enlargements, and reconstruction was the principal and almost exclusive cause for the facts as hereinabove stated, and that in said period of time the company's capital investment in said plant was increased as hereinbefore found."

The petitioner also claimed that the company's switching charge exceeded the value of the service rendered in view of the decreased earning power of the subscribers as a result of the prevailing economic depression.

The commission also allowed an exceedingly modest rate of return, estimating that the new rate would yield approximately 5 per cent on the value of the property devoted to the service. Commissioner Matson was unable to agree with his colleagues on this last point, stating there was not "sufficient evidence in the record to justify ordering a 5 per cent rate of return." Commissioner Matson also dissented from the commission's conclusion that there had been an agreement between parties that a reduction in the rate would be forthcoming last February. *Steele County Telephone Co. v. Tri-State Telephone & Telegraph Co.* (*M–2253.*)

Court Stays Water Rate Increase

DECLARING that "it strikes the court with great force that all of the equities are with the consumer," Judge Patrick B. O'Sullivan, in a decision filed September 9th with the clerk of the Connecticut Superior Court, reversed the action of the Connecticut Public Utilities Commission which increased water rates for consumers in New Haven and neighboring towns and sustained the city of New Haven in its appeal from a general increase of approximately 40 per cent by the New Haven Water Company.

The court's action marks an end temporarily at least of a contest waged by the city since the increase in rates was proposed several years ago which became very lively during the last two years when the matter has been in litigation. Under the court's decision the city government will not be obliged to pay approximately $105,000 a year for water used for municipal purposes. The exact saving to the city itself, exclusive of the savings to consumers, is reported at $91,000 a year, because the city pays the franchise tax of the water company, amounting to $14,000.

Judge O'Sullivan sustained the city on two main points: first, that the commission has the right to revise rates provided it does not do so solely in the interest of stockholders but considers the action also in behalf of the public; second, that the commission has no right to interfere with the provisions of the contract between the city and the water company relative to water for fire protection, schools, and other municipal uses, in exchange for the payment by the city of part of the company's gross franchise tax. Concerning the first point, Judge O'Sullivan stated:

> "It would be hiding one's head in legal sand to reach any other conclusion than that the upward revision of rates was due to an alleged inability of the company to pay its stockholders from annual income dividends at the rate of 8 per cent on a capitalization of $6,617,000, because the former income of the company was more than sufficient by $56,000 to meet all liabilities of the company. . . .
>
> "It was, therefore, the duty of the commission to ascertain what rate would be reasonable to the consumer as well as to the investor. What is just under one set of circumstances may be grossly unjust under another. What was reasonable in 1922 or in 1928 does not serve as the standard for 1932. The law recognizes change. In fact there is nothing so unchangeable in judicial thought as change itself. As the annual return to capital and enterprise in days of normalcy should be commensurate with such healthier economic conditions, the return should shrink in days of depression and reconstruction in conformity with the ability of the consumer to shoulder the burdens of dividends."

On the so-called "free water" provision, wherein the city was allowed water service in exchange for its payment of a part of the gross franchise tax, the court, in ruling that the commission had no right to interfere with the existing contract, stated that "as a matter of fact, it is a misnomer to refer to the water which the city receives as 'free water.'" The court added:

> "Unless the contract is to be scrapped of all of its vital factors on the theory that all of them are concerned with rates and is to be left only with provisions legally anaemic, the right of the city to so-called 'free water' is just as enforceable as the right of the company to monopolistic service in the city."

It was learned, after the decision of the court, that the New Haven Water Company will appeal to the state supreme court. It was also learned that the court's opinion affected the validity only of the application of the commission's order to the city of New Haven and that legally none of the towns outside of the city would be affected by it. *New Haven v. New Haven Water Co. et al.*

Other Important Rulings

JUDGE Harry M. Fisher, of the Illinois Circuit Court granted temporary injunctions on September 18th restraining Joseph J. Rice, state director of finance, from collecting the retailers' occupational tax, or so-called sales tax, from 21 public utility companies in the state of Illinois. The plaintiffs include the Commonwealth Edison Company, Peoples Gas Light and Coke Company, Public Service Company of Northern Illinois, and Western United Gas and Electric Company, serving Chicago and suburbs, and 17 downstate concerns, some of which do a business of only a little more than $1,000 a month. The total of taxes involved, on the basis of the July business of the companies, exceed $3,000,000 a year. Attorney General Otto Kerner represented Director Rice and was given leave to file demurrers to the utility companies' bills. The utility companies assert that they are rendering service and not selling tangible personal property, and that consequently their income is not subject to tax under the provisions of the law. *Commonwealth Edison Co. et al. v. Rice.*

An interesting decision was recently handed down by the Ohio Court of Appeals in holding a motor transportation "broker" who owned and operated no vehicles himself liable for alleged negligence of a truck driver with whom he had contracted to move some of his shipments, which resulted in a collision and personal injuries to the plaintiff—a small boy. The motor transportation broker had defended on ground that he was not liable for any damages resulting from the negligence of an independent contractor. A lower court sustained this view. In reversing the lower court's judgment, however, the court of appeals pointed out that the defendant, although not owning or operating any vehicles personally, was a "motor transportation company" within the meaning of a statute forbidding such companies to operate without securing a certificate from the state commission, and also requiring them to file with the commission a liability or insurance policy or bond to protect the interest of the public. Under such circumstances the court felt that the legislature intended to make a transportation company primarily liable to third persons for injuries resulting proximately from the negligence of the operator of the truck, and accordingly that the general rule applicable to an employer where an independent contractor is employed must be distinguished. *Kreider v. Leonard.*

NOTE.—The cases above referred to, where decided by courts or regulatory commissions, will be published in full or abstracted in *Public Utilities Reports.*